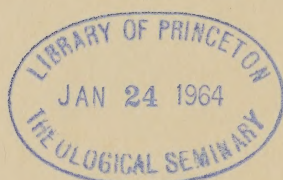


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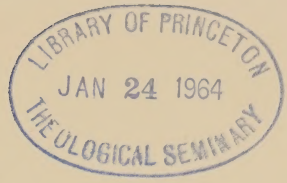








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CATHOLICS IN COLONIAL LAW

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Catholics in Colonial Law





## INTRODUCTION

The theme of religious liberty is a major element in the history of the American people. It has been expounded in a large number of studies. Notable are the works of Sanford Cobb, Evarts Greene, Anson Phelps Stokes.<sup>1</sup> These volumes make it clear that the development of religious liberty in colonial and revolutionary America was not a simple, straightforward story of continuous progress to the desired goal. Given American conditions, the tide of religious liberty may have been inexorable; but it was marked by ebbs as well as flows.

In that story the Catholics of colonial America played a peculiar part. Anglicans might, though reluctantly, concede some measure of toleration to Presbyterians and Reformed. New England Puritans might, under compulsion from Restoration England, admit the existence in their midst of Quakers and Baptists. But colonial Protestants viewed Catholics with deep suspicion, mistrust and fear. Given a choice, they would have no part with Papists. As the following pages bear witness, often they did have a choice.

In the long years between 1607 and 1789 the position of dissident Protestants before the law changed. So too the legal status of non-Protestants improved or deteriorated. But the development

of the legal position of dissident Christians, whether Protestant or Catholic, followed various paths. As the eighteenth century advanced, the standing of Protestant dissenters tended to improve. But on the eve of the American Revolution colonial governments were still enacting new laws against Catholics. The concession of liberty to the various Christian churches, then, is not a single chain of events. To comprehend the Catholic position in colonial America, governmental policy and laws concerning Catholics must be studied apart.

Measures against the Catholics reflected the popular opinion in England and her American colonies of this hated and despised minority.<sup>2</sup> The harassed Catholics could not be unaffected by this enduring hostility. The long ostracism inflicted on the Catholic families in England had caused many bearers of ancient Catholic names to surrender their ancestral faith and to conform to the Church of England. By the time of the American Revolution the faithful in England were a subdued, quiescent and dwindling minority. They sought only to avoid attention. The Catholics in the colonies were in a similar state. One need only read, for example, the letters of Charles Carroll of Carrollton to see how the Catholics in Maryland were just barely clinging to their religion. Had not the American Revolution intervened, it seems quite possible that the Catholic Church in British America, small as it was, might with time have all but disappeared.

With the schism from the British Empire, however, the Americans promulgated new organic laws. Granted the premises of their political philosophy, they had to widen the bounds of religious liberty. And the Catholic Church profited--an end not devoutly wished by many of the founding fathers.

In the nineteenth century the moribund Catholic Church in the United States and in England was to a great measure revived by the injection of large numbers of "mere" or native Irish. Colonial legislatures had sought to exclude Irish Papists; the new state legislatures could not. Again, the Catholic Church profited.

Possibly here is a key to a puzzle. For long ages before the period of colonization, the English nation had had practically no contacts with non-Caucasian races. Yet as soon as they came to America, they manifested a racist spirit from which we are still suffering. As Mark Twain put it, the British pioneers fell first on their knees and then on the aborigines. They viewed the Indians as vermin to be exterminated; they regarded the Negroes as fit only to be slaves. Indeed, the much denigrated Spaniard was a more humane man. Did this Anglo-Saxon attitude stem from

the often manifested British willingness to abolish the Irish?

The English were just as willing to exterminate native English Catholics. It has justly been said that the revolt of England against the Papacy was an act of state. To justify the new ecclesiastical settlement, the old had to be depicted as reprehensible. This the rulers of England, particularly during the reign of Queen Elizabeth I, most successfully accomplished. Before the Sarah Constant sailed, the image of the Catholic had been fixed in the popular mind: a traitor, a perjurer, a murderer, capable of any crime, any betrayal, any atrocity. By some strange anomaly, however, this conscienceless perjurer by swearing the oaths of supremacy and allegiance became instantly a loyal and guiltless subject of the British crown. If the Catholics were not plotting treason--and at times indeed desperate Catholics were--the governors of England were quite capable of inventing Popish plots. Throughout the colonial period England suffered from endemic anti-Catholicism. The era of British overseas settlements began with the Gunpowder Plot; the American Revolution ended with the Gordon Riots.

This English fear of Catholicism led to the enactment of savage penal laws against these criminal Catholics. While these laws are not in themselves the object of the present work, they cannot be altogether overlooked. The British settlers in America carried in their baggage the animus against Catholics so prevalent in their native land. In the new land this enmity was embodied in colonial law. Often these laws repeated the very words of the English statutes; the most obvious examples are the anti-Catholic oaths common to both England and America. The change of the legal status of Catholics in England was not infrequently reflected by changes in the legal position of Catholics in America. And British policy towards Catholics within the empire reflected the viewpoint of the anti-Catholic legislation of the realm of England.

The penal laws of England then must have some place in the following pages. But our major concerns are the policies and enactments of the British colonies in America on religious matters concerning Catholics. In colonial laws the Papists were not the only religious group to suffer discrimination. We are not concerned directly with statutes affecting non-Christians, or dissident Protestants, or even dissident Christians in general. In early New England, for example, to possess the franchise one had to be a member of the Puritan church. Obviously no Catholic could qualify. But the electoral laws were not directed explicitly against members of the Roman Catholic Church, and consequently they are

in the present compilation passed over. If, however, a colonial law demands that an office holder be Protestant, clearly the Catholics are experiencing discrimination. If a statute or a charter or a governmental policy requires that oaths be taken, these oaths must be looked at; only too frequently they of set purpose contained phrases no Catholic could swear to.

Our object is to see what the anti-Catholics laws were; it is not to discover whether the laws were applied. Many of them were; others were not, possibly for the reason that in some colonies no Catholics could be discovered to apply them to. The various colonial laws threatening priests with banishment or death were, for example, never employed against the Catholic clergy. Either they were not present, or they were not captured. It is one of the minor ironies of history that the New York law against priests was invoked only once, and that by error against a non-juring Protestant minister. When John Ury was led to execution in 1741, it is doubtful that he appreciated the irony.

The legal position of members of the Catholic Church in the British colonies is manifested in various types of documents. Colonial charters granted by the kings of England often refer to Catholics. Statements of policy emanating from the English government, notably the instructions given to the governors of the royal colonies, usually contained some references to Popish recusants. The enactments of the British Parliament occasionally had some bearing on Catholics in the colonies. In the colonies themselves, the organic laws granted by the proprietors or adopted by the colonial legislatures, the statutes enacted by the colonial assemblies and the statements of public policy issued by the executive power have bearings on the legal status of the Catholics.

These documents indicate that the legal position of the Catholics improved during the seventeenth century and deteriorated during the eighteenth century. In the early years of settlement Catholics were excluded from Virginia. Across the Potomac in Maryland, of course, full religious freedom was had. Restricted by the Dutch on the Hudson and on the Delaware, Catholics were--if any there were--under severe difficulties in the colonies of New England. Rhode Island was here the shining exception.

During the colonial period the greatest expansion of the British colonies and of religious toleration for Catholics occurred under the Stuart Restoration. A notable fact, but one that is ignored in most histories, is that under Charles II and James II the new or newly organized colonies received organic laws which granted, if not to all men at least to all Christians, religious freedom. The



only exceptions occurred in Puritan New England. Connecticut's charter, by authorizing her to impose anti-Catholic oaths, allowed the colony to exclude Catholics. In the Commission for New Hampshire of 1680, the king insisted that at least all Protestants be guaranteed religious liberty. In his charter to Roger Williams' colony, however, Charles II gave his royal sanction to Rhode Island's lively experiment in religious liberty.

When the Duke of York reorganized the territories seized from the Dutch, he guaranteed religious freedom to his fellow Catholics. When Lord John Berkeley and Sir George Carteret accepted New Jersey from the Duke, they could do no less; and the Quakers, when they bought out the proprietors, continued religious freedom in the Jerseys. William Penn proclaimed religious freedom for his colonies of Pennsylvania and Delaware. The early charters of the Carolinas permitted religious freedom; it was proclaimed by the lords proprietors in their statements of policy, and it was written into the fundamental constitutions attributed to the pen of John Locke.

During the reign of Charles II, Catholics acquired religious freedom under the organic laws and the statutes of Rhode Island, New York, New Jersey, Pennsylvania, Delaware, and the Carolinas. Outside of New England, there were legal barriers to full equality for Catholics only in Virginia. And in 1679 Charles II ordered his governor of Virginia "not to suffer any man to be molested or disquieted in the exercise of his religion." Under the last Stuart king religious toleration was imposed even on Puritan New England. For James II ordered his governor-general of the Dominion of New England to permit "a liberty of conscience in matters of religion to all persons."

On the eve of the so-called Glorious Revolution of 1688, then, religious toleration, if not full religious freedom, was the universal policy in all the British colonies in America. Yet, to quote one outstanding authority, on the problem of religious liberty "matters improved after the passing of the English Toleration Act in 1689."<sup>3</sup> After the accession of William and Mary, conditions did indeed change. But it is difficult to see how they changed for the better. The legal position of the Catholics deteriorated sharply; adequate demonstration of that deterioration will be found in the following pages.

How then can historians--and Stokes is but one of many--speak of improvement? The answer seems to be the successful imposition of the Whig history, a tendentious interpretation of the past which had been pounded into generations of English and American

students. The Glorious and Bloodless Revolution needed to be justified. Therefore the Stuart kings must be depicted as despots. The Tudor sovereigns were unquestionably tyrants, but--save for "Bloody Mary"--they were successful ones, and the Whig history admires them. The Stuart kings of the Restoration certainly were unsuccessful as tyrants, and the Whig history despises them. As the Glorious Revolution was a most inglorious episode in English history, so the Toleration Act of William and Mary was a serious setback for religious liberty. It took religious liberty away, not only from Catholics, but from Protestant Unitarians, from Jews and other non-Christians, and from unbelievers. That historians of the present day can consider this act an advance indicates the continued power of the Whig interpretation of history.

With the Glorious Revolution Puritan New England went back to its old way. Even in Rhode Island Catholics were deprived of the franchise. New York enacted bitterly anti-Catholic laws. Even the Quaker colonies took measures against the Papists. That colony founded by Catholics on the basis of religious liberty achieved the dubious distinction of the most complete set of penal laws against Catholics enacted outside of the British Isles. The new laws against Catholics enacted in Virginia and the Carolinas were, by comparison, mild.

As the eighteenth century advanced the tone of the colonial laws seems to pass from panic fear almost to contempt. Obviously no Catholic widow was fit to raise her own children. Clearly no Popish recusant was any more reliable as a witness in court than a savage Indian or a Negro slave or a mere woman. Unquestionably mere Irish Papists were unsuitable as colonists. Certainly no Romanist should be allowed to possess firearms; indeed, why should he be allowed to own a good horse? Again and again the colonial legislatures incorporated into their laws the anti-Catholic oaths of the Test Acts of 1673 and 1678 and of the first Parliament of William and Mary.

In all the colonies of 1688 Catholics were free to practice their religion; in most they possessed equal rights with their non-Catholic neighbors. In all the colonies in 1776 Catholics found legal obstacles to the practise of their religion; and in all the colonies they suffered legal disabilities because of their religion. As with the American Revolution new organic laws were adopted by the new state legislatures and new statute laws were enacted, the position of Catholics improved radically and rapidly. While religious liberty was not fully achieved in all the former British colonies for full fifty years after they had adopted the Declaration of Independence, the revolution began the progress that has ineradi-

cably engrained religious liberty among our most cherished American beliefs.

The present compilation endeavors at least to mention all legal enactments referring to the Catholics in colonial America. It was judged better to give references in the manner of the historical rather than the legal fraternity. Even lawyers should be able to interpret them. Well aware that "many factors are present which discourage attempts to consider the condition of law and law administration in the years between 1608 and 1776,"<sup>4</sup> the compiler does not venture on interpretations of legal matters. Perhaps, however, Blackstone may be cited on the relation of the colonies to the laws of England, especially as to religion:

Hence the common law of England has no allowance or authority there; they being no part of the Mother Country, but distinct, though dependent dominions. They are not bound by Acts of Parliament, unless they are specially named.<sup>5</sup>

It would seem, then, that the anti-Catholic penal laws of England did not of themselves have force in the colonies. If they wish, lawyers may argue the question; we will not.

Another compilation could be made of anti-Catholic bills which were introduced into colonial legislatures but which failed of passage. Sometimes these bills are cited as laws in historical writings. They are not included here. Some anti-Catholic laws passed by the colonial legislatures and signed by the governors have eventually been vetoed by the English government acting through the King in Council. These laws have been included with the veto noted. Not infrequently colonial legislatures would reaffirm anti-Catholic provisions of previous sessions of the legislatures. These acts have been noted in the present compilation, but they have not normally been repeated.

Thorns and ampersands, long-tailed esses and strange spellings of words, may have an appeal to the antiquary. But for the convenience of the reader the documents have been edited in the expanded and modernized version. Editors claim the right to be arbitrary, and this is but one of many such decisions. While the days and months are cited as given by the documents, the years are given in the new style.

Few of the documents here reproduced are given in full. If they had been, the book would be of monstrous size and of little use. Of some documents only the pertinent phrases are reproduced. In a few instances only the title of the act is cited. At times, however, the sections of laws introduced by the "Where-

ases" give the flavor of the law and the minds of the lawmakers better than the sections following the "Be it enacted." The editor here lets the legislators speak for themselves.

A compilation of documents rehearsing a long period of religious persecution is obviously not designed to be read for pleasure. But these old, forgotten, far-off things should not be altogether forgotten. They should remind us that what has happened before can happen again. They should strengthen our determination that these things will not happen again. They should deepen our commitment to the liberties which our forefathers in the crucible of history forged for our use.

<sup>1</sup>Stanford H. Cobb, The Rise of Religious Liberty in America. New York: The Macmillan Company, 1902. Evarts B. Greene, Religion and the State. New York: New York University Press, 1941. Anson Phelps Stokes, Church and State in the United States. 3 vols. New York: Harper, 1950.

<sup>2</sup>See Sister Mary Augustina Ray, American Opinion of Roman Catholicism in the Eighteenth Century. New York: Columbia University Press, 1936.

<sup>3</sup>Stokes, op. cit., I, 151.

<sup>4</sup>Francis R. Aumann, The Changing American Legal System, p.4. Columbus: Ohio State University Press, 1940.

<sup>5</sup>Cited in Hugh Hastings, ed. Ecclesiastical Records of New York, II, 1080. 7 vols. Albany: James B. Lyon, 1901-1916.



PART I

THE EARLY SETTLEMENTS

1607-1660

## 1 The Oath of Supremacy

[Gee and Hardy, Documents, 449]

The first act passed by the first Parliament of Queen Elizabeth I was entitled "An Act restoring to the Crown the ancient jurisdiction over the State ecclesiastical and spiritual, and abolishing all foreign power repugnant to the same." It revived the anti-Catholic laws of Henry VIII abolished by Queen Mary Tudor and imposed the present oath. This act was abrogated in the regime of William and Mary. For legal references to the penal laws in England, see Clarence E. Martin, "Legal Aspects of the English Penal Laws," Records of the American Catholic Historical Society 41 (1930) 133-61.

I, A.B., do utterly testify and declare in my conscience, that the queen's highness is the only supreme governor of this realm, and of all other her highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal, and that no foreign prince, person, prelate, state or potentate has, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority spiritual or ecclesiastical, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, preeminences, privileges, and authorities granted or belonging to the queen's highness, her heirs and successors, or united and annexed to the imperial crown of this realm. So help me God, and by the contents of this book.

## 2 An Act for the Better Discovering and Repressing of Popish Recusants

[Tanner, Constitutional Documents of the Reign of James I, 86-94]

The rule of James I opened with the passage of an act entitled "An Act for the due execution of the Statutes against Jesuits, Seminary, Priests, Recusants, etc.," reaffirming the Elizabethan penal laws. Suspecting the Catholics of plotting against the state, the government applied these laws harshly. The consequence was that a few Catholics, in desperation, did plot against the state. In the famous Gunpowder Plot, they planned to blow up King and Parliament. The reaction of King and Parliament was to pass the following laws. The oath of allegiance in the present act was designed to confuse the Catholics. For its effect, see Clarence J. Ryan, "The Jacobean Oath of Allegiance and English Lay Catholics," Catholic Historical Review, 28 (1942) 159-84. It will be remembered that these laws were enacted as the English were preparing to settle in Virginia; they show the temper of the English ruling class at the time.

Forasmuch as it is found by daily experience that many of his Majesty's subjects that adhere in their hearts to the Popish religion, by the infection drawn from thence, and by the wicked and devilish counsel of Jesuits, seminaries, and other like persons dangerous to the Church and State, are so far perverted in the point of their loyalties and due allegiance unto the King's Majesty and the Crown of England as they are ready to entertain and execute any treasonable conspiracies and practices, as evidently appears by that more than barbarous and horrible attempt to have blown up with gunpowder the King, Queen, Prince, Lords and Commons in the House of Parliament assembled, tending to the utter subversion of the whole state, lately undertaken by the instigation of Jesuits and seminaries and in advancement of their religion by their scholars taught and instructed by them to that purpose, which attempt by the only goodness of Almighty God was discovered and defeated:

And whereas divers persons Popishly affected do nevertheless the better to cover and hide their false hearts and with the more safety to attend the opportunity to execute their mischievous designs, repair sometimes to church to escape the penalty of the laws in that behalf provided:

For the better discovery therefore of such persons and their evil affections to the King's Majesty and the state of this his realm, to the end that being known, their evil purposes may be the better prevented, be it enacted

That every Popish recusant convicted . . . shall once in every year following at the least receive the blessed Sacrament of the Lord's Supper in the church . . . And if any recusant so conformed shall not receive the Sacrament of the Lord's Supper accordingly, he or she shall for such not receiving lose and forfeit for the first year twenty pounds and for the second year . . . forty pounds and for every year after . . . three score pounds.

That every offender in not repairing to Divine Service . . . shall . . . pay into the receipt of the Exchequer after the rate of twenty pounds for every month . . . except in such cases where the King shall and may by force of this Act refuse the same and take two parts of the lands, tenements, hereditaments, leases, and farms of such offender . . . leaving the third part only of the same . . .

. . . and if the said person . . . shall refuse to take the said oath . . . every person so refusing shall incur the danger and penalty of praemunire . . .

The tenour of which said oath hereafter followeth: I A.B. do truly and sincerely acknowledge, profess, testify and declare in my conscience before God and the world, that our sovereign lord King James is lawful and rightful King of this realm and of all other his Majesty's dominions and countries; and that the Pope, neither of himself nor by any authority of the church or See of Rome or by any other means with any other, hath any power or authority to depose the King, or to dispose any of his Majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him or his countries, or to discharge any of his subjects of their allegiance and obedience to his Majesty, or to give licence or leave to any of them to bear arms, raise tumult or to offer any violence or hurt to his Majesty's royal person, state or government or to any of his Majesty's subjects within his Majesty's dominions. Also I do swear from my heart, that notwithstanding any dec-



laration or sentence of excommunication or deprivation, made or granted or to be made or granted by the Pope or his successors or by any authority derived or pretended to be derived from him or his see, against the said King, his heirs or successors, or any absolution of the said subjects from their obedience, I will bear faith and true allegiance to his Majesty, his heirs and successors, and him or them will defend to the uttermost of my power against all conspiracies and attempts whatsoever, which shall be made against his or their persons, their crown and dignity, by reason or color of any such sentence or declaration or otherwise, and will do my best endeavour to disclose and make known unto his Majesty, his heirs and successors, all treasons and traitorous conspiracies, which I shall know or hear of to be against him or any of them: and I do further swear that I do from my heart abhor, detest and abjure, as impious and heretical, this damnable doctrine and position, that princes which be excommunicated or deprived by the Pope may be deposed or murdered by their subjects or any other whatsoever; and I do believe and in my conscience am resolved that neither the Pope nor any person whatsoever hath power to absolve me of this oath or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary: and all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion or secret reservation whatsoever: and I do make this recognition and acknowledge heartily, willingly and truly, upon the true faith of a Christian: so help me God. Unto which oath so taken, the said person shall subscribe his or her name or mark.

That any person or persons . . . [who] put in practice to absolve, persuade, or withdraw any of the subjects of the King's Majesty . . . from their natural obedience . . . or to reconcile them to the Pope or See of Rome . . . then every such person . . . shall be to all intents adjudged traitors, and being thereof lawfully convicted shall have judgment, suffer, forfeit as in cases of High Treason . . .

3 An Act to Prevent and  
Avoid Dangers which May Grow  
by Popish Recusants

[Tanner, Constitutional Documents of the Reign of James I, 94-104]

Whereas divers Jesuits, Seminaries and Popish priests daily do withdraw many of his Majesty's subjects from the true service of Almighty God and the religion established within this realm to the Romish religion and from their loyal obedience to his Majesty, and have of late secretly persuaded divers recusants and Papists and encouraged and emboldened them to commit most damnable treasons, tending to the overthrow of God's true religion, the destruction of his Majesty and his royal issue, and the overthrow of the whole state and commonwealth, if God of his goodness and mercy had not within few hours before the intended time of the execution thereof revealed and disclosed the same; wherefore to discover and prevent such secret damnable conspiracies and treasons as hereafter may be put in use by such evil-disposed persons, if remedy be not therefore provided; be it enacted . . . that such person as shall first discover to any justice of peace any recusant or other person which shall entertain or relieve any Jesuit, Seminary or Popish priest, or shall discover any mass to have been said and the persons that were present at such mass and the priest that said the same, within three days next after the offence committed, and that by reason of such discovery any of the said offenders be taken and convicted or attainted, that then the person which hath made such discovery shall . . . have the third part of the forfeiture of all sums of money . . . which shall be forfeited by such offense . . .

And whereas the repair of such evil-affected persons to the court or to the city of London may be very dangerous to his Majesty's person, and may give them more liberty to meet, consult and plot their treasons and practices against the state than if they should be restrained and confined unto their pri-

vate houses in the country; for remedy hereof be it enacted, That no Popish recusant convicted shall come into the court or house where the King's Majesty or the heir apparent to the crown of England shall be, . . . and that all Popish recusants indicted or convicted and all other persons which have not repaired to some usual church or chapel and there heard divine service . . . dwelling within the city of London or the liberties thereof or within ten miles of the said city, shall within three months next after the end of this session of parliament depart from the said city of London and ten miles compass of the same, . . .

And be it further enacted, That no recusant convict shall at any time after the end of this session of parliament practise the common law of this realm as a counsellor, clerk, attorney or soliciter in the same, nor shall practise the civil law as advocate or procter; nor practise physic, nor exercise or use the trade or art of an apothecary; nor shall be judge, minister, clerk or steward in any court, or keep any court, nor shall be register or town-clerk or other minister or officer in any court; nor shall bear any office or charge as captain, lieutenant, corporal, sergeant, ancient-bearer or other office in camp, troop, band or company of soldiers; nor shall be captain, master, governor, or bear any office or charge in any ship, castle or fortress of the King's Majesty's, his heirs and successors; . . .

And be it further enacted, That no person shall bring from beyond the seas, nor shall print, sell or buy any Popish primers, ladies-psalters, manuals, rosaries, Popish catechisms, missals, breviaries, portals, legends and lives of saints containing superstitious matter, printed or written in any language whatsoever, nor any other superstitious books printed or written in the English tongue, upon pain of forfeiture of 40s. for every such book . . . and that it shall be lawful . . . to search the houses and lodgings of every Popish recusant convict, for Popish books and relics of Popery . . .

May 23, 1609

#### 4 Second Charter of Virginia

[Thorpe, Federal and State Constitutions, 7, 3802]

Possibly by oversight the first Charter of Virginia, issued in 1606, had no provisions against Catholics. This second Charter, however, remedies this omission. Provisions for the oaths of supremacy and allegiance were thereafter commonly inserted in the early colonial charters. For some details of their application, see Harold M. Hyman, To Try Men's Souls.

And lastly, because the principal effect which we can desire or expect of this action is the conversion and reduction of the people in those parts unto the true worship of God and Christian religion, in which respect we should be loathe that any person should be permitted to pass that we suspected to affect the superstitions of the Church of Rome, we do hereby declare, that is our will and pleasure that none be permitted to pass in any voyage from time to time to be made into said country, but such as first shall have taken the Oath of Supremacy . . .

March 12, 1612

#### 5 Third Charter of Virginia

[Thorpe, Federal and State Constitutions, 7, 3807]

And we do further, for us, our heirs and successors, give and grant to the said treasurer and company, and their successors forever, by these presents, that the said treasurer of that company, or his deputy for the time being, or any two other of the said council, for the said first colony in Virginia, for the time being, or any two other at all times hereafter, and from time to time, have full power and authority to minister and give the Oath and Oaths of Supremacy and Allegiance, or

either of them, to all and every person and persons, which shall at any time or times hereafter, go or pass to the said colony in Virginia.

1620

## 6 Charter of New England

[Poore, Federal and State Constitutions, 1, 930]

This charter, granted to the Council for New England, composed of forty "persons of Honour or Gentlemen of Blood," gave title to all lands between present Pennsylvania and Newfoundland. This council attempted no settlements; instead it granted the lands to others. Most important were the grants to the Pilgrims of Plymouth, of New Hampshire and Maine to individuals, and to the New England Company of lands which provided the company its later title of the Massachusetts Bay Company. The oaths of supremacy and allegiance stipulated in the Charter of New England were repeated in the charters of the various colonies established in its territory: Massachusetts Bay charter of 1629 (ibid., 1, 940) and of 1691 (ibid., 1, 950), the grant of Maine of 1639 (ibid., 1, 728), the charter of Connecticut of 1662 (ibid., 1, 255), and the commission of New Hampshire of 1680 (ibid., 2, 1275). For the legal restrictions against Catholics in these colonies, see Arthur J. Riley, Catholicism in New England to 1788, 217-60.

And lastly, because the principal effect which we can desire or expect of the action, is the conversion and reduction of the people in those parts unto the true worship of God and Christian Religion, in which respect, we would be loath that any person should be permitted to pass that we suspected to affect the superstition of the Church of Rome, we do hereby declare that it is our will and pleasure that none be permitted to pass, in any voyage from time to time to be made into the said country, but such as shall first have taken the Oath of Supremacy; for which purpose, we do by these presents give full power and authority to the President of the said Council, to tender and exhibit the said Oath to all such persons as shall at any time be sent and employed in the said voyage.



1629

## 7 Charter of Massachusetts Bay

[Poore, Federal and State Constitutions, 1, 940]

While it is probable that Catholics were present in all the thirteen British colonies of North America, understandably they did not want to draw attention to themselves. This reticence would be particularly understandable in the bailiwick of the Puritans. See William H. Kennedy, "Catholics in Massachusetts before 1750," Catholic Historical Review, 17 (1931) 10-28.

And that the Governor and Deputy Governor of the said Company for the time being, or either of them, and any two or more of such of the said assistants as shall be thereunto appointed by the said Governor and Company at any of their courts or assemblies to be held as aforesaid, shall and may at all times, and from time to time hereafter, have full power and authority to minister and give the Oath and Oaths of Supremacy and Allegiance, or either of them, to all and every person and persons, which shall at any time or times hereafter go or pass to the lands and premisses hereby mentioned to be granted to inhabit in the same.

1639

## 8 Grant of the Province of Maine

[Poore, Federal and State Constitutions, 1, 782]

And we do further for us, our heirs and successors, give full power and authority to the said Sir Ferdinand Gorges, his heirs or assigns, to minister and give Oaths of Allegiance and Supremacy according to the forms now established in this our Realm of England to all and every such person and persons as they shall think fit . . .

November 15, 1633

9 Lord Baltimore's Instructions  
to the Pioneers of Maryland

[Calvert Papers, 1, 131-32]

George Calvert, first Lord Baltimore, after his conversion to Catholicism in 1625 sought to plant a colony in North America as a haven for his persecuted fellow Catholics. His son, Cecil, second Lord Baltimore, carried out his father's plans. That Maryland, the only Catholic settlement in British America, sought to implement the ideal of religious liberty is evident from the instructions that Baltimore gave to his officials.

Imprimis, His Lordship requires his said Governor and Commissioners that in their voyage to Mary Land they be very careful to preserve unity and peace amongst all the passengers on shipboard, and that they suffer no scandal nor offence to be given to any of the Protestants, whereby any just complaint may hereafter be made, by them, in Virginia or in England, and that for that end, they cause all acts of Roman Catholic religion to be done as privately as may be, and that they instruct all the Roman Catholics to be silent upon all occasions of discourse concerning matters of religion; and that the said Governor and Commissioners treat the Protestants with as much mildness and favor as justice will permit. And this to be observed at land as well as at sea.

October 1640

10 Maryland Act for Church Liberties

[Archives of Maryland, 1, 96]

The wording of this act is obscure, probably deliberately so. Passed by a Maryland assembly largely Catholic in membership,

it does not specify what Holy Church. A variant reading gives "Holy Churches." It has been argued that through this obscure legislation the Catholics in the Maryland Assembly sought to guarantee legal freedom to all churches. See Thomas O. Hanley, Their Rights and Liberties.

Holy Church within this province shall have and enjoy all her rights, liberties and franchises wholly and without blemish.

July 19, 1640

11 Freedoms and Exemptions  
of New Netherland

[Ecclesiastical Records of New York, 1, 130]

Though the Dutch in Holland and in New Netherland found it convenient to overlook unauthorized religious congregations, the official policy was restrictive. Persecution of dissenters from the state religion was possible, and in New Netherland it occurred. See Frederick J. Zwierlein, Religion in New Netherland, 1623-1664, and Edward J. McGuire, "An Historical Sketch of the Relations of Church and State in New York," Historical Records and Studies, 2 ( 1900 ) 105-29.

And no other Religion shall be publicly admitted in New Netherland except the Reformed as it is at present preached and practiced by public authority in the United Netherlands . . .

September 1640

12 Plantation Agreement  
at Providence,  
Rhode Island

[Thorpe, Federal and State Constitutions, 6, 3206]

When and on what basis a legal government of Rhode Island was established can be debated. A Royal charter was not granted to the colony until 1663. Parliament, however, had issued a patent in 1644, which made no mention of religious worship (*ibid.*, 6, 3209). But when Roger Williams and his associates settled in Rhode Island in 1636, their political philosophy was formed: church and state should be separate, and religious freedom should be the right of all men. These views were embodied in the plantation agreement drawn up at a series of meetings between August 27 and September 6, 1640 by the inhabitants of the town of Providence.

We agree, as formerly hath been the liberties of the town, so still, to hold forth liberty of conscience.

January 1641

13 Virginia Act Concerning  
Popish Recusants

[Virginia Magazine of History and Biography, 9 (1901-1902) 56]

The disputes in England between Puritans and Royalists which ended in civil war and the temporary overthrow of the monarchy had reverberations across the ocean in the colonies. Many Virginians viewed with alarm and deep suspicion the newly planted colony of Maryland in territory the Virginians considered theirs. Hence the House of Burgesses enacted anti-Catholic measures. For details on office holding in the colonies, see Frank H. Miller,

"Legal Qualifications for Office in America, " Annual Report of American Historical Association, 1 (1899), 87-153.

It is enacted by the authority aforesaid, that according to a Statute made in the third year of the reign of our sovereign Lord King James, of blessed memory, no popist [sic] recusant shall at any time hereafter exercise the place or places of secretary, counsellor, register, commissioner, surveyor or sheriff, or any other public place, but be utterly disabled for the same;

And further, be it enacted by the authority aforesaid, that none shall be admitted into any of the aforesaid offices or places before he or they have taken the oaths of supremacy and allegiance. And if any person or persons whatsoever shall by any sinister or secret means contrive to himself any of the aforesaid places, or any other public office whatsoever, and refuse to take the aforesaid oaths, he or they so convicted before any assembly shall be dismissed of his said office, and for his offense herein, forfeit a thousand pounds weight of tobacco, to be disposed of by the next grand assembly after conviction.

And it is enacted by the authority aforesaid that the statutes in force against popish recusants be duly executed in the government; and that it shall not be lawful, under the penalty aforesaid, for any popish priest that shall hereafter arrive here to remain above five days, after warning given for his departure by the governor or commander of that place where he or they shall be, if wind and weather hinder not his departure; this act to be in force after ten days from the publication here at James City.

March 2, 1643

14 Virginia's Second Act  
Concerning Popish Recusants

[Statutes at Large of Virginia, 1, 268]

Whereas it was enacted at an assembly in January 1641, that according to a statute made in the third year of the reign of our sovereign Lord, King James of blessed memory, that no Popish



recusants should at any time hereafter exercise the place of secret counsellors, register or commissioner, surveyors or sheriff, or any other public place, but be utterly disabled for the same, and further it was enacted that none should be admitted into any of the aforesaid offices or places before he or they had taken the oath of allegiance and supremacy,

And if any person or persons whatsoever should by sinister or corrupt means assume to himself any of the aforesaid places or any other public office whatsoever and refuse to take the aforesaid oaths, he or they so convicted before an assembly should be dismissed of his said office, and for his offense therein forfeit 1,000 pounds of tobacco to be disposed of at the next assembly after conviction.

And it is further enacted by the authority aforesaid that the statute in force against the Popish recusants be duly executed in this government,

And that it should not be lawful under the penalty aforesaid for any Popish priest that shall hereafter arrive to remain above five days after warning given for his departure by the Governor or commander of the place where he or they shall be, if wind and weather hinder not his departure.

May 26, 1647

## 15 The Anti-Jesuit Law of Massachusetts

[Colonial Laws of Massachusetts, 67]

Besides their embittered opposition to prelacy and Popery, the Puritans of Massachusetts viewed with suspicion the French in Canada and with alarm the missionary efforts of Catholic priests among the Indians in the territory of Maine. Hence the present law was enacted.

The Court taking into consideration the great wars, combustions and divisions which are this day in Europe, and that the same are observed to be raised and fomented chiefly by the secret underminings and solicitations of those of the Jesuitical order, men brought up and devoted to the religion of the Court of Rome,

which has occasioned divers states to expel them from their territories, for prevention whereof among ourselves, it is therefore ordered and enacted, by the authority of this court that no Jesuit or spiritual or ecclesiastical person (as they are termed) ordained by the authority of the pope or see of Rome shall henceforth at any time repair to or come within this jurisdiction, and if any person shall give just cause of suspicion that he is one of such society or order he shall be brought before some of the magistrates, and if he cannot free himself of such suspicion, he shall be committed or bound over to the next court of Assistants, to be tried and proceeded with by banishment or otherwise, as the Court shall see cause; and if any such person so banished shall be taken the second time within this jurisdiction, he shall, upon lawful trial and conviction, be put to death; provided, this law shall not extend to any such Jesuit, spiritual or ecclesiastical person as shall be cast upon our shores by shipwreck or other accident, so as he continue no longer than he may have opportunity of passage for his departure, nor to any such as shall come in company with any messenger sent hither upon public occasion, or any merchant or master of any ship belonging to any place not in enmity with the State of England or ourselves, so as they depart again with the same messenger, merchant, or master, and behave themselves inoffensively during their abode here.

1648

16 Oath Required of the  
Governor of Maryland

[Archives of Maryland, 3, 209]

With England controlled by a Puritan government and with his proprietorship under attack, Lord Baltimore deemed it advisable to appoint a Protestant as governor of his colony. He sought to protect the religious freedom of Maryland by imposing an oath on his governor. A similar oath (*ibid.*, 3, 214) was required of the members of the governor's council.

And I do further swear that I will not by myself, nor any other person directly or indirectly, trouble, molest or discountenance any person whatsoever in the said province professing to believe in Jesus Christ, and in particular no Roman Catholic, for or in respect of his or her religion, nor in his or her free exercise thereof within the said province, so as they be not unfaithful to his said Lordship or molest or conspire against the civil Government established under him, nor will I make any difference of persons in conferring of offices, rewards, or favours proceeding from the authority which his said Lordship hath conferred on me as his Lieutenant here, for or in respect of their said religion respectively, but merely as I shall find them faithful and well-deserving of his said Lordship, and to the best of my understanding endowed with moral virtues and abilities fitting for such offices, rewards, or favours, wherein my prime aim and end from time to time shall sincerely be the advancement of his said Lordship's service here, and the public unity and good of the Province without partiality to any, or any other sinister end, whatsoever. And if any other officer or persons whatsoever shall during the time of my being his said Lordship's Lieutenant here, without my consent or privity, molest or disturb any person within this province professing to believe in Jesus Christ merely for or in respect of his or her religion, or the free exercise thereof, upon notice or complaint thereof made unto him, I will apply my power and authority to relieve any person so molested or troubled, whereby he may have right done him for any damage which he shall suffer in that kind, and to the utmost of my power will cause all and every such person or persons as shall molest or trouble any other person or persons in that manner to be punished.

April 21, 1649

## 17 Maryland's Act of Toleration

[Archives of Maryland 1, 244-47]

This justly famed law is formally entitled "An Act concerning Religion." Charles M. Andrews notes (Colonial Period of American History, 2, 310): " . . . it is not pleasant to read the fate which it meted out to those who denied the divinity of Christ. This

inhuman clause was no part of Baltimore's original text, for it was an amendment added by the Puritan-Protestant assembly in the colony . . ." This act did not initiate the policy of religious freedom in Maryland; indeed, it was a desperate effort to protect that policy from the attacks of the Puritans.

Forasmuch as in a well governed and Christian commonwealth, matters concerning religion and the honor of God ought in the first place to be taken into serious consideration and endeavored to be settled. Be it therefore ordained and enacted by the Right Honourable Caecilius Lord Baron of Baltimore, absolute Lord and Proprietary of this Province, with the advice and consent of this General Assembly, that whatsoever person or persons within this province and the islands thereunto belonging, shall from henceforth blaspheme God, that is curse him, or shall deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity, the Father, Son and Holy Ghost, or the Godhead of any of the said three persons of the Trinity, or the unity of the Godhead, or shall use or utter any reproachful speeches, words, or language, concerning the Holy Trinity, or any of the said three persons thereof, shall be punished with death, and confiscation or forfeiture of all his or her land and goods to the Lord Proprietary and his heirs.

And be it also enacted by the authority and with the advice and assent aforesaid, That whatsoever person or persons shall from henceforth use or utter any reproachful words or speeches concerning the blessed Virgin Mary, the mother of our Saviour, or the Holy Apostles or Evangelists, or any of them, shall in such case for the first offense forfeit to the said Lord Proprietary and his heirs Lords and Proprietaries of this province, the sum of five pounds sterling, or the value thereof, to be levied on the goods and chattels of every such person so offending; but in case such offender or offenders shall not then have goods and chattels sufficient for the satisfying of such forfeiture, or that the same be not otherwise speedily satisfied, that then such offender or offenders shall be publicly whipped, and be imprisoned during the pleasure of the Lord Proprietary, or the Lieutenant or Chief Governor of this province for the time being; and that every such offender and offenders for every second offense shall forfeit ten pounds sterling or the value thereof to be levied as aforesaid, or in case such offender or offenders shall not then have goods and chattels within this province sufficient for that pur-



pose, then to be publicly and severely whipped and imprisoned as before is expressed. And that every person or persons before mentioned, offending herein the third time, shall for such third offense, forfeit all his lands and goods and be forever banished and expelled out of this province.

And be it also further enacted by the same authority, advice and assent, that whatsoever person or persons shall from henceforth, upon any occasion of offense or otherwise in a reproachful manner or way, declare, call or denominate, any person or persons whatsoever, inhabiting, residing, trafficking, trading or commercing within this province or within any the ports, harbors, creeks, or havens to the same belonging, an heretic, schismatic, idolator, Puritan, Presbyterian, Independent, Popish priest, Jesuit, Jesuited Papist, Lutheran, Calvinist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or other name or term in a reproachful manner relating to matter of religion, shall for every such offense forfeit and lose the sum of ten shillings sterling, or the value thereof to be levied on the goods and chattels of every such offender and offenders, the one half thereof to be forfeited and paid unto the person and persons of whom such reproachful words are or shall be spoken or uttered, and the other half thereof to the Lord Proprietary and his heirs, Lords and Proprietaries of this province; but if such person or persons who shall at any time utter or speak any such reproachful words or language, shall not have goods or chattels sufficient and overt within this province to be taken to satisfy the penalty aforesaid, or that the same be not otherwise speedily satisfied, that then the person and persons so offending shall be publicly whipped, and shall suffer imprisonment without bail or mainprise until he, she, or they, respectively shall satisfy the party offended or grieved by such reproachful language by asking him or her respectively forgiveness publicly for such his offense before the magistrate or chief officer or officers of the town or place where such offense shall be given.

And be it further likewise enacted by the authority and consent aforesaid, that every person and persons within this province that shall at any time hereafter profane the Sabbath or Lord's day called Sunday, by frequent swearing, drunkenness, or by any uncivil or disorderly recreation, or by working on that day, when absolute necessity does not require it, shall for every such first offense forfeit two shillings sixpence



sterling or the value thereof; and for the second offense five shillings sterling or the value thereof; and for the third such offense and for every time he shall offend in like manner afterwards ten shillings sterling or the value thereof; and in case such offender or offenders shall not have sufficient goods or chattels within this province to satisfy any of the aforesaid penalties respectively hereby imposed for profaning the Sabbath or Lord's day called Sunday as aforesaid, then in every such case the party so offending shall for the first and second offense in that kind be imprisoned till he or she shall publicly in open court before the chief commander, judge, or magistrate of that county, town, or precinct wherein such offense shall be committed, acknowledge the scandal and offense he has in that respect given, against God, and the good and civil government of this province: And for the third offense and for every time after shall also be publicly whipped.

And whereas the enforcing of the conscience in matter of religion has frequently fallen out to be of dangerous consequence in those commonwealths where it has been practiced, and for the more quiet and peaceable government of this province, and the better to preserve mutual love and amity amongst the inhabitants thereof, Be it therefore also by the Lord Proprietary with the advice and assent of this Assembly, ordained and enacted (except as in this present Act is before declared and set forth), that no person or persons whatsoever within this province or the islands, ports, harbors, creeks, or havens thereunto belonging, professing to believe in Jesus Christ shall from henceforth be anyways troubled, molested or discountenanced, for or in respect of his or her religion, nor in the free exercise thereof within this province or the islands thereunto belonging, nor any way compelled to the belief or exercise of any other religion against his or her consent, so as they be not unfaithful to the Lord Proprietary, or molest or conspire against the civil government, established or to be established in this province under him or his heirs.

And that all and every person and persons that shall presume contrary to this Act and the true intent and meaning thereof, directly or indirectly, either in person or estate, willfully to wrong, disturb, or trouble, or molest any person or persons whatsoever within this province professing to believe in Jesus Christ, for or in respect of his or her religion, or the free exercise thereof within this province, other than is provided for in this Act, that such person or persons so offending shall be

compelled to pay treble damages to the party so wronged or molested, and for every such offense shall also forfeit twenty shillings sterling in money or the value thereof, half thereof for the use of the Lord Proprietary and his heirs, Lords and Proprietaries of this province, and the other half thereof for the use of the party so wronged or molested as aforesaid; or if the party so offending as aforesaid, shall refuse or be unable to recompense the party so wronged or to satisfy such fine or forfeiture, then such offender shall be severely punished by public whipping and imprisonment during the pleasure of the Lord Proprietary or his lieutenant or chief governor of this province for the time being, without bail or mainprise.

And be it further also enacted by the authority and consent aforesaid, that the sheriff or other officer or officers from time to time to be appointed and authorized for that purpose of the county, town, or precinct where every particular offense in this present Act contained, shall happen at any time to be committed, and whereupon there is hereby a forfeiture, fine, or penalty imposed, shall from time to time distrain, and seize the goods and estate of every such person so offending as aforesaid, against this present Act or any part thereof, and sell the same or any part thereof, for the full satisfaction of such forfeiture, fine, or penalty as aforesaid, restoring to the party so offending the remainder or overplus of the said goods, or estate, after such satisfaction so made as aforesaid.

July 22, 1654

## 18 Catholics in Maryland Disfranchised

[Archives of Maryland, 3, 313]

With the end of the civil war in England and the execution of King Charles I, Parliament moved to reduce to submission those colonies in which Royalist sympathies still flourished. William Claiborne, anti-Catholic and a bitter enemy of the Maryland settlement, secured appointment as one of the two parliamentary commissioners to the colonies on Chesapeake Bay. He overthrew Baltimore's government and called elections, in which Protestants alone could vote, to set up a new government. For details, see

William T. Russell, Maryland, Land of Sanctuary. For the various legal restrictions against Catholic voting, see Albert E. McKinley, The Suffrage Franchise in the Thirteen English Colonies in America.

The present document is formally titled "Order for settling the Government of Maryland." It was signed at Patuxent by Claiborne and his fellow commissioner, Richard Bennet.

As also that they [the commission appointed to rule Maryland] summon an assembly to begin on the 20th day of October next; for which assembly all such shall be disabled to give any vote, or to be elected members thereof, as have born arms in war against the Parliament, or do profess the Roman Catholic religion.

October 20, 1654

#### 19 Maryland's Act of Toleration Repealed

[Archives of Maryland, 1, 340-41]

With Catholics forbidden to vote, the new Maryland assembly was completely dominated by the Puritans. As soon as this group met, they repealed the act of toleration. The law is formally entitled "An Act concerning Religion." See Sanford H. Cobb, Rise of Religious Liberty in America.

. . . That none who profess and exercise the Popish religion, commonly known by the name of Roman Catholic, can be protected in this province, by the laws of England, formerly established and yet unrepealed . . . but are to be restrained from the exercise thereof. Therefore all and every person or persons concerned in the law aforesaid are required to take notice.

Such as profess faith in God by Jesus Christ, through differing in judgment from the doctrine, worship and discipline publicly held forth, shall not be restrained from, but shall be protected in the profession of the faith and exercise of their religion, so as they abuse not this liberty to the injury of others,

the disturbance of the public peace on their part, provided that this liberty be not extended to popery or prelacy nor to such as under the profession of Christ hold forth and practice licentiousness.

March 24, 1658

20 Religious Liberty  
Restored in Maryland

[Archives of Maryland, 3, 324-26]

Lord Baltimore in England convinced the Commonwealth government that he was not disloyal. He negotiated an agreement with commissioners of Parliament, signed November 30, 1657, which stipulated that "all persons professing to believe in Jesus Christ have freedom of conscience there" (*ibid.*, 3, 334). His government was restored to him in the Spring of 1658. He instructed his governor to reestablish religious liberty.

His Lordship wills and requires his said Lieutenant and Council that the law in the said province, entitled An Act concerning Religion and passed heretofore there with his Lordship's assent, whereby all persons who profess to believe in Jesus Christ have liberty of conscience and free exercise of their religion there, be duly observed in the said province by all the inhabitants thereof . . .

February 1, 1656

21 The Dutch West India Company  
Bans Unauthorized Religious  
Services in New Netherland

[Ecclesiastical Records of New York, 1, 344]

The Director General and Council have credibly been informed, that not only conventicles and meetings are held here and there

in this Province, but that also unqualified persons presume in such meetings to act as teachers in interpreting and expounding God's holy Word without ecclesiastical or temporal authority. This is contrary to the general political and ecclesiastical rules of our Fatherland and besides such gatherings lead to troubles, heresies and schisms.

Therefore to prevent this the Director General and Council strictly forbid all such public or private conventicles and meetings, except the usual and authorized ones, where God's reformed and ordained Word is preached and taught in a meeting for the reformed divine service conformed to the Synod of Dort and followed here as well as in the Fatherland and other reformed churches of Europe, under a fine of 100 pounds Flemish to be paid by all, who in such public or private meetings, except the usual authorized gatherings, on Sunday or other days presume to exercise without due qualification the duties of a preacher, reader or precentor and each man or woman, married or unmarried, who are found at such a meeting, shall pay a fine of 25 pounds Flemish.

The Director General and Council do not however hereby intend to force the consciences, to the prejudice of formerly given patents, or to forbid the preaching of God's holy Word, the family prayers and divine service in the family, but only all public and private conventicles and gatherings, be they in public or private houses, except the already mentioned usual and authorized reformed divine service.

In order that this order may be the better observed and nobody plead ignorance thereof the Director General and Council direct and charge their Fiscal and the inferior Magistrates and Schouts, to publish it everywhere in this Province and prosecute the transgressors, whereas we have so decreed it for the honor of God, the advancement of the Reformed service and the quiet, unity and welfare of the country in general.



PART II

THE RESTORATION PERIOD

1660-1688

April 23, 1662

## 22 The Charter of Connecticut

[Thorpe, Federal and State Constitutions, 1, 533]

The colonies of Hartford and New Haven continued as separate entities until they accepted this charter in April 1665, three years after it was issued by King Charles II.

. . . And We do authorize and impower the Governor, or in his absense the Deputy-Governor for the time being, to appoint two or more of the said Assistants at any of their Courts or Assemblies to be held as aforesaid, to have power and authority to administer the Oath of Supremacy and Obedience to all and every person and persons which shall at any time or times hereafter go or pass into the said Colony of Connecticut, unto which said Assistants so to be appointed as aforesaid, We do by these presents give full power and authority to administer the said oath accordingly.

April 16, 1663

## 23 Religious Toleration Permitted in New Netherland

[Ecclesiastical Records of New York, 1, 530]

The autocratic Governor Peter Stuyvesant, persecuting dissenting Protestants by fines and banishment, brought on by his policy this instruction from the directors of the Dutch West India Company. The letter states one of the major reasons for the development of religious toleration in colonial America.

Your last letter informed us that you had banished from the Province and sent hither by ship a certain Quaker, John Bowne, by name: although we heartily desire, that these and other

sectarians remained away from there, yet as they do not, we doubt very much, whether we can proceed against them rigorously, without diminishing the population and stopping immigration, which must be favored at a so tender stage of the country's existence. You may therefore shut your eyes, at least not force people's consciences, but allow every one to have his own belief, as long as he behaves quietly and legally, gives no offence to his neighbors and does not oppose the government. As the government of this city has always practised this maxim of moderation and consequently has often had a considerable influx of people, we do not doubt, that your Province too would be benefitted by it.

July 8, 1663

#### 24 Charter of Rhode Island and Providence Plantations

[Thorpe, Federal and State Constitutions, 6, 3212]

Issued by King Charles II, this charter gave royal sanction to Rhode Island's "lively experiment" in religious liberty. The colonists on occasion reaffirmed their policy; e.g., in 1673, their assembly declared: ". . . considering that the King hath granted us that not any in this colony are to be molested in the liberty of their consciences who are not disturbers of the civil peace, and we are persuaded that a most flourishing civil government with loyalty may be best propagated where liberty of consciences by any corporal power is not obstructed . . ." (Records of Rhode Island, 2, 503 ).

. . . whereas in their humble address, they have freely declared that it is much on their hearts (if they may be permitted), to hold forth a lively experiment, that a most flourishing civil state may stand and best be maintained, and that among our English subjects, with a full liberty in religious concerns . . . We have therefore thought fit, and do hereby publish, grant, ordain and declare, that our royal will and pleasure is, that no person within the said colony, at any time hereafter, shall be any wise molested, punished, disquieted, or called in

question, for any differences in opinion in matters of religion, and do not actually disturb the civil peace of our said colony; but that all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences in matters of religious concernments throughout the tract of land hereafter mentioned; they behaving themselves peaceably and quietly, and not using this liberty to licentiousness and profaneness, nor to the civil injury or outward disturbance of others; any law, statute, or clause, therein contained or to be contained, usage or custom of this realm to the contrary hereof in any wise notwithstanding.

Year Uncertain

25 Rhode Island Disfranchises  
Catholics

[Records of Rhode Island, 2, 36]

That the law in colonial Rhode Island disfranchised Catholics is certain. When the law was enacted - indeed, if it was enacted - is uncertain. In the eighteenth century a committee was appointed to prepare a digest of the laws of the colony. Possibly the restrictive clause was added by this group. At any event their digest of Rhode Island laws, first published in 1719, contained the clause banning Catholics from voting, and subsequent digests followed suit. See S. S. Rider, "Inquiry into the Origin of the Clause in the Laws of Rhode Island, 1719-1783, Disqualifying Roman Catholics," Rhode Island Historical Tracts, 2nd series, no. 1

That all men professing Christianity and of competent estates and of civil conversation, who acknowledge and are obedient to the civil magistrates, though of different judgments in religious affairs (Roman Catholics only excepted) shall be admitted freemen, and shall have liberty to chose and be chosen officers of the colony, both military and civil.

March 24, 1663

## 26 Charter of Carolina

[Thorpe, Federal and State Constitutions, 5, 2752]

This charter, issued by Charles II, was so drawn that the widest religious liberty was possible.

And because it may happen that some of the people and inhabitants of the said province cannot, in their private opinions, conform to the public exercise of religion, according to the liturgy, form and ceremonies of the church of England, or take and subscribe the oaths and articles, made and established in that behalf, and for that the same, by reason of the remote distances of these places, will, we hope, be no breach of the unity and uniformity established in this nation; our will and pleasure therefore is, and we do by these presents, for us, our heirs and successors, give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and free license, liberty and authority, by such legal ways and means as they shall think fit, to give and grant unto such person or persons, inhabiting and being within said province, or any part thereof, who really in their judgments, and for conscience sake, cannot or shall not conform to the said liturgy and ceremonies, and take and subscribe the oaths and articles aforesaid, or any of them, such indulgences and dispensations in that behalf, for and during such time and times, and with such limitations and restrictions as they, the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs or assigns, shall in their discretion think fit and reasonable; and with this express proviso, and limitation, also, that such person and persons, to whom such indulgences and dispensations shall be granted as aforesaid, do and shall from time to time declare and continue all fidelity, loyalty and obedience to us, our heirs



and successors, and be subject and obedient to all other the laws, ordinances, and constitutions of the said province, in all matters whatsoever, as well ecclesiastical as civil, and do not in any wise disturb the peace and safety thereof, or scandalize or reproach the said liturgy, forms and ceremonies, or anything relating thereunto, or any person or persons whatsoever, for or in respect of his or their use or exercise thereof, or his and their obedience and confirmity, thereunto.

August 4 - September 4, 1663

27 A Declaration and Proposals  
of the Lords Proprietors  
of Carolina

[Thorpe, Federal and State Constitutions, 5, 2755, 2757]

The proprietors of the Carolinas, noting that the power was granted to them in their charter, here proclaimed religious liberty to all.

We will grant, in as ample manner as the undertakers shall desire, freedom and liberty of conscience in all religious or spiritual things, and to be kept inviolably with them, we having power in our charter so to do.

That no person or persons qualified as aforesaid, within the Province or any or all of the Counties before exprest, at any time shall be anyways molested, punished, disquieted, or called in question for any differences in opinion or practice in matters of religious concernment who do not actually disturb the civil peace of the said Province or Counties, but that all and every such person and persons from time to time and at all times freely and fully have and enjoy his and their judgments and consciences in matters of religion throughout all the said Province, they behaving themselves peaceably and quietly and not using this liberty to licentiousness nor to the civil injury or outward disturbance of others, any law, statute, or clause contained or to be contained, usage or customs of this realm of England to the contrary hereof in anywise notwithstanding.

June 30, 1665

## 28 New Charter of Carolina

[Thorpe, Federal and State Constitutions, 5, 2771]

This new charter repeats the provision on religious freedom of the Charter of 1663 and adds the following statements, recalling, often in the same words, the concessions and agreements of the proprietors.

And that no person or persons unto whom such liberty shall be given, shall be any way molested, punished, disquieted, or called in question, for any differences of opinion, or practise in matters of religious concernments, who do not actually disturb the civil peace of the province, county or colony, that they shall make their abode in: But all and every such person and persons may, from time to time, and at all times, freely and quietly have and enjoy his and their judgments and consciences, in matters of religion, throughout all the said province or colony, they behaving themselves peaceably, and not using this liberty to licentiousness, nor to the civil injury, or outward disturbance of others: Any law, statute, or clause, contained or to be contained, usage or custom of our realm of England, to the contrary hereof, in anywise, notwithstanding.

March 1, 1669

## 29 Fundamental Constitutions of Carolina

[Thorpe, Federal and State Constitutions, 5, 2783-85]

This document, written largely by John Locke, secretary to the Lords Proprietors of Carolina, and amended by the Earl of Shaftesbury, was never very effective and was abandoned before the end of the seventeenth century. Once again, however, full religious

liberty was proclaimed as a fundamental right in the Carolina settlements.

But since the natives of that place, who will be concerned in our plantation, are utterly strangers to Christianity, whose idolatry, ignorance, or mistake gives us no right to expel or use them ill; and those who remove from other parts to plant there will unavoidably be of different opinions concerning matters of religion, the liberty whereof they will expect to have allowed them, and it will not be reasonable for us, on this account, to keep them out, that civil peace may be maintained amidst diversity of opinions, and our agreement and compact with all men may be duly and faithfully observed; the violation whereof, upon what pretence soever, cannot be without great offense to Almighty God, and great scandal to the true religion which we profess; and also that Jews, Heathens, and other dissenters from the purity of Christian religion may not be scared and kept at a distance from it, but, by having an opportunity of acquainting themselves with the truth and reasonableness of its doctrines, and the peaceableness and inoffensiveness of its professors, may, by good usage and persuasion, and all those convincing methods of gentleness and meekness, suitable to the rules and design of the gospel, be won over to embrace and unfeignedly receive the truth; therefore, any seven or more persons agreeing in any religion, shall constitute a church or profession, to which they shall give some name, to distinguish it from others . . .

No person of any other church or profession shall disturb or molest any religious assembly . . .

No man shall use any reproachful, reviling, or abusive language against any religion of any church or profession . . .

February 28, 1665

30 The Duke's Laws in New York

[Colonial Laws of New York, 1, 25]

On March 12, 1664, Charles II granted to his brother James, the Catholic Duke of York, the lands between the Connecticut and

the Delaware Rivers. In August 1664 an English fleet seized New Amsterdam from the Dutch. The colony was renamed New York and a proprietary government was established. The Duke's Laws, guaranteeing religious freedom to Christians, were put into effect at first only in those areas largely inhabited by English people - Long Island, Staten Island and Westchester.

That no congregations shall be disturbed in their private meetings, in the time of prayer, preaching, or other divine service; nor shall any person be molested, fined, or imprisoned, for differing in judgment in matters of religion, who profess Christianity.

February 10, 1665

31 The Concessions and Agreements of  
the Lords Proprietors of the Province  
of New Caesarea, or New Jersey

[Archives of New Jersey, 1, 30]

In June 1664 the Duke of York granted the territory, named by him New Jersey, to Sir George Carteret and Lord John Berkeley. These proprietors guaranteed religious liberty in the widest possible terms.

Item, That all persons that are or shall become subjects to the King of England and swear or subscribe allegiance to the King and faithfulness to the Lords shall be admitted to plant and become freemen of the said Province . . .

Item, That no person qualified as aforesaid [i.e., by oath of allegiance] within the said Province, at any time shall be any ways molested, punished, disquieted or called in question for any difference in opinion or practice in matter of religious concerns, who do not actually disturb the civil peace of the said Province; but that all and every such person and persons may from time to time and at all times truly and fully have and enjoy his and their judgments and consciences in matters of religion throughout all the said Province: they behaving themselves peaceably and quietly and not using this

liberty to licentiousness, nor to the civil injury or outward disturbance of others, any law, statute, or clause contained or to be contained, usage or custom of this realm of England to the contrary thereof in any wise notwithstanding.

March 15, 1672

32 The Declaration of  
Indulgence of Charles II

[Robertson, Select Statutes, 75-77]

The Stuart Kings of the Restoration period, Charles II and James II, sought to ameliorate the condition of the English Catholics. In December 1662, Charles issued his first Declaration of Indulgence, by which he undertook, if Parliament would agree, to suspend the operation of the penal laws against dissenters. Parliament, however, refused to concur, and thus rendered the declaration ineffective. In the present declaration the King did not seek the approval of Parliament but declared the penal laws suspended. When Parliament met early in 1673, the House of Commons reacted by adopting a resolution that the penal statutes in matters ecclesiastical could be suspended only by act of Parliament. The King consequently was forced to recall his declaration on March 8, 1673.

Our care and endeavors for the preservation of the rights and interests of the Church have been sufficiently manifested to the world by the whole course of our government, since our happy restoration, and by the many and frequent ways of coercion that we have used for reducing all erring or dissenting persons, and for composing the unhappy differences in the matters of religion, which we found among our subjects upon our return. But it being evident by the sad experience of twelve years, that there is very little fruit of all those forcible courses, we think ourselves obliged to make use of that supreme power in ecclesiastical matters, which is not only inherent in us but hath been declared and recognized to be so by several statutes and acts of parliament. And therefore we do now accordingly issue out this our royal declaration, as well



for the quieting the minds of our good subjects in these points, for inviting strangers in this conjuncture to come and live under us, and for the better encouragement of all to a cheerful following of their trades and callings, from whence we hope, by the blessing of God, to have many good and happy advantages to our government; as also for preventing for the future the danger that might otherwise arise from private meetings and seditious conventicles. And in the first place, we declare our express resolution, meaning and intention to be, that the Church of England be preserved, and remain entire in its doctrine, discipline, and government, as it now stands established by law: and that this be taken to be, as it is, the basis, rule and standard of the general and public worship of God, and the orthodox conformable clergy do receive and enjoy the revenues belonging thereunto; and that no person, though of different opinion and persuasion, shall be exempt from paying his tithes, or dues whatsoever. And further we declare, that no person shall be capable of holding any benefice, living, or ecclesiastical dignity or preferment of any kind in this kingdom of England, who is not exactly conformable. We do in the next place declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical, against whatsoever sort of non-conformists, or recusants, be immediately suspended, and they are hereby suspended. And all judges of assize and gaol-delivery, sheriffs, justices of the peace, mayors, bailiffs, and other offices whatsoever, whether ecclesiastical or civil, are to take notice of it and pay due obedience thereunto, and that there may be no pretence for any of our subjects to continue their illegal meetings and conventicles, we do declare, that we shall from time to time allow a sufficient number of places, as shall be desired, in all parts of this our kingdom, for the use of such as do not conform to the Church of England, to meet and assemble in, in order to their public worship and devotion; which places shall be open and free to all persons. But to prevent such disorders and inconveniences as may happen by this our indulgence, if not duly regulated, and that they may be better protected by the civil magistrate, our express will and pleasure is, that none of our subjects do presume to meet in any place, until such place be allowed, and that the teacher of that congregation be approved by us. And lest any should apprehend that this our restriction should make our said allowance and approbation difficult to be obtained, we do further

declare, that this our indulgence as to the allowance of public places of worship, and approbation of teachers, shall extend to all sorts of non-conformists and recusants, except the recusants of the Roman Catholic religion, to whom we shall no ways allow in public places of worship, but only indulge them in their share in the common exemption from the executing the penal laws, and the exercise of their worship in their private houses only. And if after this our clemency and indulgence, any of our subjects shall presume to abuse this liberty, and shall preach seditiously, or to the derogation of the doctrine, discipline, or government of the established church, or shall meet in places not allowed by us; we do hereby give them warning, and declare, we will proceed against them with all imaginable severity: and we will let them see, we can be as severe to punish such offenders, when so justly provoked, as we are indulgent to truly tender consciences.

March 29, 1673

### 33 The Test Act

[Robertson, Select Statutes, 81-84]

Parliament was not content to force Charles II to withdraw his Declaration of Indulgence. The present act added to the usual oaths of supremacy and allegiance a new anti-Catholic oath, commonly known as the "test," and frequently applied in the American colonies.

An Act for preventing the dangers which may happen from popish recusants.

For preventing dangers which may happen from popish recusants, and quieting the minds of his Majesty's good subjects: . . . That all and every person and persons, as well peers as commoners, that shall bear any office or offices, civil or military . . . within the realm of England, dominion of Wales, or town of Berwick upon Tweed, or in his Majesty's navy, or in the several islands of Jersey and Guernsey, or shall be of the household, or in the service or employment of his Majesty, or of his Royal Highness the Duke of York . . . all and every

the said person or persons shall personally appear . . . in public and open court . . . and take the several Oaths of Supremacy and Allegiance, (which Oath of Allegiance is contained in the statute made in the third year of King James) . . . and shall also receive the Sacrament of the Lord's Supper, according to the usage of the Church of England . . .

. . . they shall likewise make and subscribe this declaration following, under the same penalties and forfeitures as by this act is appointed:

I, A.B., do declare, that I do believe that there is not any transubstantiation in the sacrament of the Lord's Supper, or in the elements of Bread and Wine, at or after the consecration by any person whatsoever.

December 1, 1678

#### 34 The Test Act of 1678

[Robertson, Select Statutes, 86-92]

In England, the perennial rumors of Catholic plots constantly poisoned the atmosphere. But in 1678 all England was in panic fear of the "Popish Plot," fabricated out of whole cloth by a charlatan named Titus Oates. Indeed, both houses of Parliament, without a single dissenting vote, on November 1, 1678, declared "That there hath been, and still is, a damnable and hellish Plot, contrived and carried on by the Popish recusants, for the assassinating and murdering the King, and for subverting the government, and rooting out and destroying the Protestant religion." (Cited in Tanner, English Constitutional Conflicts of the XVII Century, 239.) Parliament also enacted the present law, formally titled "An act for the more effectual preserving the King's person and government, by disabling papists from sitting in either house of Parliament." The new version of the test oath in the act became the common version of the test as used in England and America.

I, A.B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, that I do believe that in the Sacrament of the Lord's Supper there is not any transubstantiation

of the elements of bread and wine into the Body and Blood of Christ, at or after the consecration thereof by any person whatsoever, and that the invocation or adoration of the Virgin Mary or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous. And I do solemnly in the presence of God profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English Protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose, by the Pope, or any authority, or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am or can be acquitted before God or man, or absolved of this declaration or any part thereof, although the Pope, or any other person or persons or power whatsoever, should dispense with or annul the same, or declare that it was null and void from the beginning.

July 1, 1674

35 Religious Freedom  
Ordered in New York

[Ecclesiastical Records of New York, 1, 649]

The Dutch briefly recovered New York in 1673 during one of the Anglo-Dutch wars. The Duke of York recovered his colony in the following year, and in his instructions to his new governor, Sir Edmund Andros, he ordered religious liberty. Andros proclaimed the Duke's Laws, guaranteeing religious liberty, in effect in the colony on August 6, 1674 (ibid., 1, 664).

You shall permit all persons of what religion soever, quietly to inhabit within the precincts of your jurisdiction, without giving any disturbance or disquiet whatsoever, for or by reason of their differing opinions in matter of religion: Provided they give no disturbance to the public peace, nor do molest or disquiet others in the free exercise of their religion.

1676

36 The Charter or Fundamental  
Laws of West New Jersey

[Thorpe, Federal and State Constitutions, 5, 2549]

Tired of his annoying and profitless share in New Jersey, Lord John Berkeley sold his interests there to a Quaker in London in 1674. The colony was then divided into two, East Jersey still owned by Sir George Carteret, and West Jersey controlled by a Quaker group. The Quakers thereupon proclaimed religious freedom in their section.

That no men, nor number of men upon earth, hath power or authority to rule over men's consciences in religious matters, therefore it is consented, agreed and ordained, that no person or persons whatsoever within the said Province, at any time or times hereafter, shall be any ways upon any pretense whatsoever, called in question, or in the least punished or hurt, either in person, estate, or privilege, for the sake of his opinion, judgment, faith or worship towards God in matters of religion. But that all and every such person, and persons, may from time to time, and at all times, freely and fully have, and enjoy his and their judgments, and the exercises of their consciences in matters of religious worship throughout all the said Province.

1683

37 The Fundamental Constitutions for  
the Province of East New Jersey

[Thorpe, Federal and State Constitutions, 5, 2579]

As Berkeley in 1674, so Sir George Carteret, fed up with difficulties, sold his share of New Jersey to the Quakers, in 1682.



The Friends reaffirmed for East New Jersey the religious freedom guaranteed since 1665.

All persons living in the Province who confess and acknowledge the one Almighty and Eternal God, and hold themselves obliged in conscience to live peaceably and quietly in a civil society, shall in no way be molested or prejudged for their religious persuasions and exercise in matters of faith and worship; nor shall they be compelled to frequent and maintain any religious worship, place or ministry whatsoever: Yet it is also hereby provided, that no men shall be admitted a member of the great or Common Council, or any other place of public trust, who shall not profess faith in Christ Jesus, and solemnly declare that he doth no ways hold himself obliged in conscience to endeavour alteration in the government, or seeks the turning out of any in it, or their ruin or prejudice, either in person or estate, because they are in his opinion heretics, or differ in their judgment from him: Nor by this article is it intended, that any under the notion of this liberty shall allow themselves to avow atheism, irreligiousness, or to practice cursing, swearing, drunkenness, prophaness, whoring, adultery, murdering or any kind of violence, or indulging themselves in stage plays, masks, revells or such like abuses; for restraining such and preserving the people in diligence and in good order, the great Council is to make more particular laws, which are punctually to be put into execution.

December 6, 1679

38 Religious Freedom  
Ordered in Virginia

[Labaree, Royal Instructions, 2, 495]

In 1679, a new governor had to be appointed for the royal colony of Virginia. The government of Charles II used the occasion to order, in the instructions drawn up for the governor, that all religions be tolerated.

And because we are willing to give all possible encouragement to persons of different persuasions in matters of religion to transport themselves thither with their stocks, you are not to suffer any man to be molested or disquieted in the exercise of his religion so he be content with a quiet and peaceable enjoyment of it, not giving offense or scandal to the government.

September 18, 1680

39 The Commission for  
New Hampshire

[Thorpe, Federal and State Constitutions, 4, 2448]

The area of New Hampshire was claimed and controlled by Massachusetts until Charles II made it a royal colony in 1680. The King provided for tolerance for all Protestants. Possibly he decided that that was the best he could do for religious liberty in this Puritan stronghold.

. . . and our express will and pleasure is that no person shall be admitted to sit or have a vote in the said council until he have taken the oath of allegiance and supremacy . . .

. . . and for the greater ease and satisfaction of the said loving subjects in matters of religion, we do hereby will, require and command the liberty of conscience shall be allowed unto all Protestants; yet such especially as shall be conformable to the rites of the Church of England shall be particularly countenanced and encouraged . . .

May 5, 1682

40 Frame of Government  
of Pennsylvania

[Thorpe, Federal and State Constitutions, 5, 3063]

On March 14, 1681, Charles II granted to William Penn the territory of Pennsylvania. In August 1682, Penn also secured possession of the territory comprising the present state of Delaware. For practical purposes the two colonies may be considered as one. While Delaware had its own assembly after 1703, its measures largely followed those of the assembly of Pennsylvania, and one governor usually ruled both colonies until 1776. Both colonies had the same organic law, whether it was the various Frames of Government or the later Charter of Privileges. When Penn began the settlement of Pennsylvania in the autumn of 1682, he had already drafted this first Frame of Government, which proclaimed religious liberty to all theists.

That all persons living in this province, who confess and acknowledge the one Almighty and eternal God, to be the Creator, Upholder and Ruler of the world; and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall, in no ways, be molested or prejudiced for their religious persuasion, or practice, in matters of faith and worship, nor shall they be compelled, at any time, to frequent or maintain any religious worship, place or ministry whatever.

October 30, 1683

41 The Charter of Liberties  
of New York

[Colonial Laws of New York, 1, 115]

The first legislative assembly in the history of the colony of New York was called in October 1683 by Governor Thomas Dongan, a Catholic Irishman. It enacted fifteen measures under the title of "The Charter of Liberties and Privileges Granted by His Royal Highness to the Inhabitants of New York and Its Dependencies." One provision guaranteed religious toleration to all Christians. While these laws became effective immediately, they were subject to review by the proprietor. He gave his approval in October 1684. When, however, he became king on the death of his brother Charles II in February 1685, James disallowed as king what he had approved as duke. Planning his Dominion of New England, James vetoed the charter on March 3, 1685.

That no person or persons, which profess faith in God by Jesus Christ, shall at any time be any ways molested, punished, disquieted, or called in question for any difference in opinion or matter of religious concernment, who do not actually disturb the civil peace of the Province, but that all and every such person or persons may, from time to time, and at all times, freely have and fully enjoy his or their judgments or consciences in matters of religion throughout all the Province, they behaving themselves peaceably and quietly, and not using this liberty to licentiousness, nor to the civil injury or outward disturbance of others.

November 1, 1683

42 New York Naturalizes  
Alien Christians

[Colonial Laws of New York, 1, 123]

The question of admitting aliens to citizenship in the British colonies is complicated. Usually only British subjects were legally entitled to own land in the British colonies. Occasionally local colonial assemblies passed private bills of naturalization, which often named the aliens admitted to the rights of freemen. In 1740 the British Parliament enacted a general law on naturalization for the British colonies. This law required the usual oaths and the test and the reception of the sacrament in Anglican services; these provisions effectively banned alien Catholics from citizenship. The same provisions were commonly found in the colonial acts of naturalization. The present act of New York had no anti-Catholic oaths or tests. It was replaced by a law in 1715 which had the usual oaths and test (*ibid.*, 1, 858). The contents of the law of 1683 are sufficiently indicated by its title. See Albert H. Carpenter, "Naturalization in England and the American Colonies," American Historical Review 9 (1903-1904) 288-303.

An Act for naturalizing all those of foreign nations at present inhabiting within this Province and professing Christianity and for encouragement of others to come and settle within the same.

May 29, 1686

43 Religious Freedom  
Ordered in New York

[Ecclesiastical Records of New York, 2, 916]

When the Duke of York became King James II, the proprietary colony of New York became a royal colony. James vetoed the Char-



ter of Liberties, but he retained his Catholic governor, Thomas Dongan, in office and ordered him to maintain religious liberty. Indeed, the royal instructions widened the bounds of that liberty. Whereas the Charter extended it to all Christians, James ordered it applied to "all persons of what religion soever."

You shall permit all persons of what religion soever quietly to inhabit within your government without giving them any disturbance or disquiet whatsoever for or by reason of their differing opinions in matters of religion, provided they give no disturbance to the public peace, nor do molest or disquiet others in the free exercise of their religion.

April 4, 1687

#### 44 The Declaration of Indulgence of James II

[Robertson, Select Statutes, 388-91]

As his brother Charles, so James II sought to end the persecution of the English Catholics. He therefore issued this proclamation which suspended all the penal laws against religious dissenters, Protestant or Catholic. While ready to extend toleration to Protestant dissenters, the dominant class in England was unwilling to see Catholics tolerated. This declaration was a major cause of the "Glorious Revolution" of 1688 which drove the last Catholic king from the throne of England.

His Majesty's gracious declaration to all his loving subjects for liberty of conscience

It having pleased Almighty God not only to bring us to the imperial crown of these kingdoms through the greatest difficulties, but to preserve us by a more than ordinary providence upon the throne of our royal ancestors, there is nothing now that we so earnestly desire as to establish our government on such a foundation as may make our subjects happy, and unite them to us by inclination as well as duty. Which we think can be done by no means so effectually as by granting to them the free exercise of their religion for the time to come, and add

that to the perfect enjoyment of their property, which has never been in any case invaded by us since our coming to the crown. Which being the two things men value most, shall ever be preserved in these kingdoms, during our reign over them, as the truest methods of their peace and glory. We cannot but heartily wish, as it will easily be believed, that all the people of our dominions were members of the Catholic Church; yet we humbly thank Almighty God, it is and has of long time been our constant sense and opinion (which upon divers occasions we have declared) that conscience ought not to be constrained nor people forced in mere matters of mere religion; it has ever been directly contrary to our inclination, as we think it is to the interest of government, which it destroys by spoiling trade, depopulating countries, and discouraging strangers, and finally, that it never obtained the end for which it was employed. And in this we are the more confirmed by the reflections we have made upon the conduct of the four last reigns. For after all the frequent and pressing endeavours that were used in each of them to reduce this kingdom to an exact conformity in religion, it is visible the success has not answered the design, and that the difficulty is invincible.

We therefore, out of our princely care and affection unto all our loving subjects, that they may live at ease and quiet, and for the increase of trade and encouragement of strangers, have thought fit by virtue of our royal prerogatives to issue forth this our declaration of indulgence, making no doubt of the concurrence of our two Houses of Parliament when we shall think it convenient for them to meet.

In the first place, we do declare that we will protect and maintain our archbishops, bishops, and clergy, and all other our subjects of the Church of England in the free exercise of their religion as by law established, and in the quiet and full enjoyment of all their possessions, without any molestation or disturbance whatsoever.

We do likewise declare, that is our royal will and pleasure that from henceforth the execution of all and all manner of penal laws in matters ecclesiastical, for not coming to church, or not receiving the sacrament, or for any other nonconformity to the religion established, or for or by reason of the exercise of religion in any manner whatsoever, be immediately suspended; and the further execution of the said penal laws and every of them is hereby suspended.

And to the end that by the liberty hereby granted the peace

and security of our government in the practice thereof may not be endangered, we have thought fit, and do hereby straitly charge and command all our loving subjects, that - as we do freely give them leave to meet and serve God after their own way and manner, be it in private houses or places purposely hired or built for that use, so that they take especial care that nothing be preached or taught amongst them, which may anyway tend to alienate the hearts of our people from us or our government, and that their meetings and assemblies be peaceably, openly, and publicly held, and all persons freely admitted to them and that they do signify and make known to some one or more of the next justices of the peace what place or places they set apart for those uses, and that all our subjects may enjoy such their religious assemblies with greater assurance and protection - we have thought it requisite, and do hereby command, that no disturbance of any kind be made or given unto them, under pain of our displeasure, and to be further proceeded against with the utmost severity.

And forasmuch as we are desirous to have the benefit of the service of all our loving subjects, which by law of nature is inseparably annexed to and inherent in our royal person, and that none of our subjects may for the future be under any discouragement or disability (who are otherwise well inclined and fit to serve us) by reason of some oaths or tests that have been usually administered on such occasions, we do hereby further declare, that it is our royal will and pleasure that the oaths commonly called 'The oaths of supremacy and allegiance, and also the several tests and declarations mentioned in the Acts of Parliament made in the five - and - twentieth and thirtieth years of the reign of our late royal brother, King Charles II, shall not at any time hereafter be required to be taken, declared or subscribed by any person or persons whatsoever, who is or shall be employed in any office or place of trust, either civil or military, under us or in our government. And we do further declare it to be our pleasure and intention from time to time hereafter, to grant our royal dispensations under our great seal to all our loving subjects so to be employed, who shall not take the said oaths, or subscribe or declare the said tests or declarations in the above-mentioned Acts and every of them.

And to the end that all our loving subjects may receive and enjoy the full benefit and advantage of our gracious indulgence hereby intended, and may be acquitted and discharged from all

pains, penalties, forfeitures, and disabilities by them or any of them incurred or forfeited, or which they shall or may at any time hereafter be liable to, for or by reason of their non-conformity, or the exercise of their religion, and from all suits, troubles, or disturbances for the same; we do hereby give our free and ample pardon unto all non-conformists, recusants, and other our loving subjects, for all crimes and things by them committed or done contrary to the penal laws, formerly made relating to religion, and the profession or exercise thereof; hereby declaring that this our royal pardon and indemnity shall be as good and effectual to all intents and purposes, as if every individual person had been therein particularly named, or had particular pardons under our great seal, which we do likewise declare shall from time to time be granted unto any person or persons desiring the same: willing and requiring our judges, justices, and other officers to take notice of and obey our royal will and pleasure hereinbefore declared.

And although the freedom and assurance we have hereby given in relation to religion and property might be sufficient to remove from the minds of our loving subjects all fears and jealousies in relation to either, yet we have thought fit further to declare that we will maintain them in all their properties and possessions, as well of church and abbey lands, as in any other their lands and properties whatsoever. Given at our court at Whitehall the fourth day of April, 1687, in the third year of our reign.

April 16, 1687

45 Religious Toleration Order  
in the Dominion of New England

[Ecclesiastical Records of New York, 2, 954]

Carrying out a plan long considered in England to consolidate the American colonies into strong royal dominions, the Dominion of New England, comprising New Jersey, New York and the colonies in New England, was set up. Sir Edmund Andros, the first governor-general, arrived in December 1686. Within two weeks

of his issuance of the Declaration of Indulgence, James II ordered that religious liberty be extended throughout the Dominion. Until the collapse of the Dominion in the spring of 1689, after the "Glorious Revolution" in England, religious freedom existed in New England--the only time, save in Rhode Island, when it existed in the colonial period.

You are to permit a liberty of conscience in matters of religion to all persons, so they be contented with a quiet and peaceable enjoyment of it, pursuant to our gracious declaration, bearing date the fourth day of April, in the third year of our reign; which you are to cause to be duly observed and put in execution.





PART III

GLORIOUS REVOLUTION AND AFTER

1689-1714

46 An Act for the Abrogating  
of the Oaths of Supremacy  
and Allegiance, and  
Appointing Other Oaths

[Robertson, Select Statutes, 121-22]

Immediately after the "Glorious Revolution," the British Parliament in the present act abrogated the Elizabethan law of 1559 imposing the oath of supremacy and the Jacobean law of 1606 imposing the oath of allegiance. It provided new oaths, which were to be frequently demanded in colonial acts.

I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties, King William and Queen Mary, so help me God.

I, A.B., do swear, that I do from my heart abhor, detest and abjure as impious and heretical, that damnable doctrine and position that princes excommunicated or deprived by the pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever; and I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any power, jurisdiction, superiority, preeminence or authority, ecclesiastical or spiritual, within this realm, so help me God.

May 24, 1689

47 Toleration Act of  
William and Mary

[Robertson, Select Statutes, 124-28]

This legislation, formally entitled "An act for exempting their Majesties' Protestant subjects, differing from the Church of Eng-

land, from the penalties of certain laws," greatly restricted the religious liberty granted by James II. To quote Sir C. Grant Robertson (*ibid.*, 123): "But though the act was called a Toleration Act, and has borne that name ever since, it is clear that it is a misnomer, for it is not based on the principles of toleration, which it does not admit, but merely grants a very limited exemption from the statutory penalties, under carefully defined conditions, to Protestant Nonconformists, and excludes from its benefits Roman Catholics, Unitarians, Jews, and all who have no religious creed."

Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties' Protestant subjects in interest and affection: Be it enacted . . .

That neither the statute[s] made in . . . the reign of the late Queen Elizabeth . . . nor the statute made in the third year of the reign of the late King James the First, intituled An act for the better discovering and repressing popish recusants; nor that other statute made in the same year, intituled An act to prevent and avoid dangers which may grow by popish recusants; nor any other law or statute of this realm made against papists or popish recusants; except the statute made in the five and twentieth year of King Charles the Second, entituled, An act for preventing dangers which may happen from popish recusants; and except also the statute made in the thirtieth year of the said King Charles the Second, intituled An act for the more effectual preserving the King's person and government, by disabling papists from sitting in either house of parliament; shall be construed to extend to any person or persons dissenting from the Church of England, that shall take the oaths mentioned in a statute made by this present parliament, . . . and that shall make and subscribe the declaration mentioned in a statute made in the thirtieth year of the reign of King Charles the Second . . .

Provided always, . . . That neither this act, nor any clause, article, or thing herein contained, shall . . . extend to give any ease, benefit, or advantage to any papist or popish recusant whatsoever, or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid articles of religion.

November 2, 1689

48 Pennsylvania Excludes  
Catholics from Office

[Colonial Records of Pennsylvania, 1, 305]

When the news of the accession of William and Mary to the throne of England reached the proprietary government of Pennsylvania, Governor John Blackwell and his council officially proclaimed the new monarchs. Knowing the strong anti-Catholic animus of the successful revolutionaries, the Pennsylvanians deemed it prudent in their proclamation to exclude Catholics from office.

And it is hereby further declared, That all officers commissioned or empowered by this government, do stand, abide, and remain in the same stations, offices and employments, as they were before the date hereof, and so remain and continue until further order (Roman Catholics only excepted).

1689

49 Instructions to the Royal  
Governor of New York

[Ecclesiastical Records of New York, 2, 991]

With the downfall of James II came the end of the experiment in religious freedom in the British colonies in America. One of the first royal governors appointed, Henry Sloughter to the colony of New York, received these instructions with his commission as governor.

You shall administer, or cause to be administered, the oaths appointed by Act of Parliament to be taken, instead of the oaths of allegiance and supremacy and the Test, to the members and



officers of our Council, to all judges and justices, and all other persons that hold any office in our said Province by virtue of any patent under our Great Seal of England or our Seal of our Province of New York . . .

And you are to permit a liberty of conscience to all persons (except Papists) so they be contented with a quiet and peaceable enjoyment of it, not giving offense or scandal to the government.

May 13, 1691

50 New York Excludes  
Catholics from Toleration

[Colonial Laws of New York, 1, 247-48]

The so-called Glorious Revolution in England precipitated several revolts in the American colonies, equally marked by anti-Catholic animus. The Dominion of New England broke up. Leaders of the revolt in Massachusetts, proclaiming a "Popish plot," threw the Governor-General into a Boston jail. In New York the revolt was named for its leader, Jacob Leisler (see Jerome R. Reich, Leisler's Rebellion), who was markedly anti-Catholic, and drove the English Jesuits from the colony. When the new royal government was established it hanged Leisler. But it did not fail to enact anti-Catholic measures. The present act was formally entitled "An Act declaring what are the rights and privileges of their Majesties' subjects inhabiting within their Province of New York."

That no person of what degree or condition soever throughout this Province chosen, appointed, commissioned to officiate or execute any office or place, civil or military, within this Province, shall be capable in the law to take upon him the charge of such places before he hath first taken the oaths appointed by act of Parliament to be taken in lieu of the oaths of supremacy and allegiance, and subscribes the test.

That no person or persons which profess faith in God by Jesus Christ his only son shall at any time be any ways molested, punished, disturbed, disquieted or called in ques-

tion for any difference in opinion or matter of conscience in religious concernment . . . always provided that nothing herein mentioned or contained shall extend to give liberty for any persons of the Romish religion to exercise their manner of worship contrary to the laws and statutes of their Majesties' Kingdom of England.

October 7, 1691

## 51 Charter of Massachusetts Bay

[Thorpe, Federal and State Constitutions, 3, 1881]

With the end of the Dominion of New England, Rhode Island and Connecticut re-established governments under their old charters. But the charter of Massachusetts of 1629 had been annulled by the High Court of Chancery in England in 1684. The Puritans sought to have their original charter restored, but the English government refused. Eventually a new charter, merging Plymouth and Maine with Massachusetts, was issued. It contained, as was to be expected, anti-Catholic provisions.

. . . We do by these presents for us, our heirs and successors, grant, establish and ordain that for ever hereafter there shall be a liberty of conscience allowed in the worship of God to all Christians (except Papists) inhabiting or which shall inhabit or be resident within our said Province or Territory . . .

And our will and pleasure is that the Governor and Lieutenant or Deputy Governor and Councillors or Assistants for the time being and all other officers to be appointed or chosen as aforesaid shall before the undertaking the execution of their offices and places respectively take their several and respective oaths for the due and faithful performance of their duties in their several and respective offices and places and also the oaths appointed by the said Act of Parliament made in the first year of our reign to be taken instead of the Oaths of Allegiance and Supremacy and shall make repeat and subscribe the declaration mentioned in the said Act . . .

And we do hereby grant and ordain that the Governor . . . may at times and from time to time hereafter have full power

and authority to administer and give the oaths appointed by the said Act of Parliament made in the first year of Our reign to be taken instead of the Oaths of Allegiance and Supremacy to all and every person and persons which are now inhabiting or residing within our said Province or Territory . . .

November 22, 1689

52 Maryland Catholics  
Excluded from Office

[Archives of Maryland, 8, 107; 20, 144]

The overthrow of the government of the Catholic king in England was followed in Maryland by the overthrow of the government of the Catholic proprietor. In the terms of surrender it imposed on the Maryland government, Coode's Rebellion, named for its leader John Coode, an embezzler and quondam Anglican divine, excluded Catholics from office. For this anti-Catholic rebellion, see Charles M. Andrews, Colonial Period, 2, 371-79. The spirit of the insurgents is indicated by the name they gave themselves: the Protestant Association.

Secondly, That no Papist in this province being in any office military or civil as by their Majesties' Proclamation and the laws of England.

August 26, 1691

53 Catholics Tolerated  
in Maryland

[Archives of Maryland, 8, 273]

Among the demands of the Maryland rebels was that the rule of the colony be taken away from the Catholic Baltimore family and that a royal government be established. The British government

was happy to oblige, and appointed Lionel Copley as the first royal governor in 1691. Maryland remained a royal colony until in 1716 a Protestant became Lord Baltimore, when the colony was returned to the Baltimore family. After the "Glorious Revolution," the royal governors of the colonies commonly received instructions to tolerate any and all religions "except Papists." Only on three occasions was this rule violated, and the words "except Papists" omitted: in the instructions to the first three royal governors of Maryland, Copley, Francis Nicholson, appointed March 8, 1694 and Nathaniel Blakiston, appointed October 4, 1698 (*ibid.*, 23, 542; 22, 286, 372). With the appointment of John Seymour in May 4, 1703, the phrase "except Papists" appeared in his instructions.

And you are to permit a liberty of conscience to all persons so they may be contented with a quiet and peaceable enjoyment of it, not giving offense or scandal to the government.

1692

#### 54 Catholic Lawyers in Maryland Disbarred

[Archives of Maryland, 8, 448]

Though the royal governor of Maryland had received instructions to tolerate Catholics, he and his council deemed it proper to take steps against Catholic Marylanders. For measures against the Catholics, see Denis M. Moran, "Anti-Catholicism in Early Maryland Politics," Records of the American Catholic Historical Society, 61 (1950) 139-54; 213-36. A few years later the governor issued a proclamation on March 30, 1698, "prohibiting Romish priests etc., from drawing over his Majesty's subjects in this government to the Romish faith . . ." (Archives of Maryland, 22, 48).

Ordered also that for the future no Roman Catholic or other person whatsoever unqualified to do in any manner directly or indirectly practice as an attorney or counsellor at law either in public pleading or otherwise soliciting any cause.

1692

55 Catholics Excluded from  
Office in Pennsylvania

[Colonial Records of Pennsylvania, 1, 353]

As the government of William and Mary suspected the Baltimore family so it suspected William Penn, also a personal friend of the deposed King James II. As Lord Baltimore was deprived of his right to rule Maryland, so Penn was despoiled of his right to rule Pennsylvania. A royal governor, Colonel Benjamin Fletcher, was appointed October 21, 1692 to Pennsylvania, Delaware and New York. Penn, however, recovered his rights in his colonies in 1694. In the interval the legal existence of Catholics in the colonies on the Delaware was perilous. Instructed to call an assembly, Fletcher imposed on them the usual oaths, April 20, 1693 (ibid., 1, 364). He did not, it appears, use his authority to demand the oaths from all residents of the two colonies.

[The governor was instructed to call a meeting of the general assembly of the colony, and impose on the members]

. . . the oaths appointed by act of Parliament to be taken, instead of the oaths of allegiance and supremacy, and subscribe the test, and without taking and subscribing whereof, none shall be capable of sitting though elected . . .

. . . to administer and give the oaths appointed by Act of Parliament to be taken instead of the oaths of allegiance and supremacy, to all and every such person or persons as you shall think fit, who shall at any time or times pass into our said Province, or shall be resident or abiding there . . .



July 7, 1696

56 Anti-Catholic Oaths  
Imposed on New Hampshire

[New Hampshire State Papers, 3, 201]

The reasons prompting the assembly of New Hampshire to enact this law are obscure. The penalty for refusing the oaths was set as imprisonment and a fine. The governor of the colony issued a proclamation on July 7, 1696 ordering the oaths to be taken (ibid., 2, 191). There are no records indicating that any inhabitant refused to swear.

An Act requiring all persons to take the oath of allegiance and supremacy.

Whereas a late horrid and detestable conspiracy against his Majesty's sacred person, as by the Providence of Almighty God, (hath) been happily discovered and thereby his Majesty's royal person preserved: to the intent that all his subjects, within this Province, may now recognize their duty and allegiance:

Be it therefore enacted and ordained . . . That all male persons within this Province, from sixteen years old and upwards, on due notice of time and place, shall appear and take the oath appointed by Act of Parliament to be taken instead of the oath of allegiance and supremacy . . .

February 1697

57 South Carolina Excludes  
Catholics from Toleration

[Statutes at Large of South Carolina, 1, 131-33]

Though the original charters of Carolina guaranteed religious liberty to all, whether Christian or not, the assembly of South

Carolina by the present act restricted that liberty only to Protestants.

An act for the making aliens free of this part of this Province, and for granting liberty of conscience to all Protestants.

And whereas several of the present inhabitants of this country did transport themselves into this Province, in hopes of enjoying the liberty of their consciences according to their own persuasion, which the Royal King Charles the Second, of blessed memory, in his gracious charter was pleased to empower the Lords Proprietors of this Province to grant to the inhabitants of this Province for to encourage the settlement of the same,

Be it therefore enacted . . .

That all Christians which now are, or hereafter may be in this Province (Papists only excepted) shall enjoy the full, free and undisturbed liberty of their consciences, so as to be in the exercise of their worship according to the professed rules of their religion, without any let, molestation or hindrance by any power either ecclesiastical or civil whatsoever.

1698

## 58 South Carolina Seeks White Servants, Save Irish

[Statutes at Large of South Carolina, 1, 153]

At the turn of the century a number of colonies - South Carolina, Virginia and Maryland - enacted legislation about the Irish. The native Catholic Irish, known at the time as "mere" or "savage" Irish, were not welcome in the colonies. Indeed, the Presbyterians of Ulster, for whom the euphemism "Scotch-Irish" was later coined, were not too welcome, either. But it is clear that the discriminatory legislation was chiefly aimed at the mere Irish. See Emberson E. Proper, Colonial Immigration Laws.

An Act for the Encouragement of the Importation of White Servants.  
. . . that every merchant, owner or master of any ship or vessel, or any other person not intending to settle or plant here,

which shall bring any white male servants, Irish only excepted . . . shall receive . . . the sum of thirteen pounds for every servant so delivered. . .

1699

59 Maryland Act Against  
Irish Papists

[Archives of Maryland, 22, 497]

Maryland left no doubt about what kind of Irish it did not want. Another law placing a special tax on imported Irish Papist servants was enacted in 1704 (ibid., 26, 289, 349; 27, 371), and the tax was doubled in 1717 (ibid., 33, 109).

An Act for raising a supply towards the defraying of the public charge of this province and to prevent too great a number of Irish Papists being imported into this province.

. . . all masters of ships or others importing Irish servants into this province by land or water at the time of their entry shall pay unto the naval officer for the time being belonging to such port or place where they make their entry the sum of twenty shillings sterling . . .

1699

60 Virginia Taxes Non-  
English Servants

[Statutes at Large of Virginia, 3, 193]

The act was passed for the stated purpose of raising money to build a capital by a tax on the importation of white bond servants and on negro slaves. At the time the main source of bond servants and redemptioners was the British Isles. That English and Welsh were exempted from the tax leads to the suspicion, to say the least, that the people aimed at were the Irish, and chiefly the Irish Catholics.

. . . the sum of fifteen shillings per poll for every servant not born in England or Wales, and twenty shillings for every Negro or other slave which shall be imported into this his Majesty's colony and dominion . . .

April 1699

## 61 Virginia Disfranchises Catholics

[Statutes at Large of Virginia, 3, 172]

The provision of the law of 1699 forbidding Catholics to vote was repeated in later laws of Virginia: in 1705 (ibid., 3, 238), in 1762 (ibid., 7, 519), in 1769 (ibid., 8, 307).

. . . no woman sole or covert, infants under the age of twenty-one, or recusant convict being freeholders shall be enabled to give a vote . . .

March 7, 1699

## 62 East New Jersey Excludes Catholics from Toleration

[Grants, Concessions . . . of New Jersey, 372]

In the history of New Jersey this was the first legal measure against Catholics. It was embedded in "An Act declaring what are the rights and privileges of his Majesty's subjects, inhabiting within this Province of East New Jersey." When the two Jerseys were united into a royal province in 1702, the first governor came equipped with the usual instructions for the imposition of oaths and for liberty of conscience to all, save Papists (Archives of New Jersey, 2, 522).

That no person or persons that profess faith in God, by Jesus Christ, his only Son, shall not at any time be any way mo-

lest, punished, disturbed or be called in question for any difference in opinion, in matters of religious concernment, who do not under that pretense disturb the civil peace of this province, or use this liberty to licentiousness. Provided this shall not extend to any of the Romish religion, to exercise their manner of worship, contrary to the laws and statutes of his Majesty's realm of England.

1700

63 An Act for the Further  
Preventing the Growth of Popery

[Robertson, Select Statutes, 148-50]

Why King William and his supporters in Parliament felt it necessary to add yet another anti-Catholic act to the English penal laws is not altogether clear. Probably it was aimed at weakening the party supporting the Stuart pretender to the throne. At any event, this English law was soon followed by more anti-Catholic legislation on the other side of the ocean.

Whereas there has been of late a much greater resort into this kingdom than formerly of popish bishops, priests, and Jesuits, and they do very openly, and in insolent manner, affront the laws, and daily endeavour to pervert his Majesty's natural born subjects, which has been occasioned by neglect of the due execution of the laws already in force: for preventing the further growth of popery, and of such treasonable and execrable designs and conspiracies against his Majesty's person and government, and the established religion, as have lately, as well as frequently heretofore, been brought to light, and happily defeated by the wonderful providence of God; be it enacted . . . all and every person and persons, who shall apprehend and take one or more popish bishop, priest or Jesuit, and prosecute him or them so apprehended and taken, until he or they be convicted of saying mass, or of exercising any other part of the office or function of a popish bishop or priest within these realms, shall have and receive from the sheriff or sheriffs of the county where such conviction shall be



made (without paying any fee for the same ) for every such offender so convicted, the sum of one hundred pounds . . .

And for a further remedy against the growth of popery, over and beyond the good laws already made, be it further enacted by the authority aforesaid, That if any popish bishop, priest or Jesuit whatsoever, shall say mass, or exercise any other part of the office or function of a popish bishop or priest within these realms, or the dominions thereunto belonging, or if any papist, or person making profession of the popish religion, shall keep school, or take upon themselves the education or government, or boarding of youth in any place within this realm, or the dominions thereunto belonging, such person or persons being thereof lawfully convicted, that then every such person shall on such conviction be adjudged to perpetual imprisonment, in such place or places within this kingdom as the King by advice of his privy council shall appoint.

#### 64 Instructions to Royal Governors on Religious Toleration

[Labaree, Royal Instructions, 2, 494]

After the "Glorious Revolution," the standard instructions to the governors of the royal colonies, down to the American Revolution, ordered toleration of all religions save the Catholic. This order applied from the first appointments of William and Mary in Virginia, New York, New Hampshire and Massachusetts. It was extended to New Jersey when that province was made a royal colony in 1702. It was in the instructions of the first royal governor appointed in South Carolina in 1720 and in North Carolina in 1730. The first royal governor of Georgia in 1754 received the same instructions.

You are to permit a liberty of conscience to all persons except Papists, so they be contented with a quiet and peaceable enjoyment of the same, not giving offense or scandal to the government.

June 17, 1700

65 Massachusetts Act Against  
Jesuits and Popish Priests

[Acts and Resolves . . . of Massachusetts Bay, 1, 423-24]

In 1697 Richard Coote, Earl of Bellomont, was appointed governor of New York, New Hampshire and Massachusetts. Bitterly anti-Catholic, he had the legislatures of Massachusetts and New York enact new laws against priests in wording that was almost identical.

Whereas divers Jesuits, priests and popish missionaries have of late come, and for some time have had their residence in the remote parts of this province, and other his Majesty's territories near adjacent, who by their subtle insinuations industriously labor to debauch, seduce and withdraw the Indians from their due obedience unto his majesty, and to excite and stir them up to sedition, rebellion and open hostility against his majesty's government for prevention whereof,

Be it enacted by His Excellency the Governor, Council, and Representatives in General Court assembled, and it is enacted by the authority of the same:

(Section 1) That all and every Jesuit, seminary priest, missionary, or other spiritual or ecclesiastical person made or ordained by any authority, power or jurisdiction derived, challenged or pretended from the pope or see of Rome, now residing within this province or any part thereof, shall depart from and out of the same at or before the tenth day of September next, in this present year one thousand and seven hundred.

And be it further enacted by the authority aforesaid,

(Section 2) That all and every Jesuit, seminary priest, missionary or other spiritual or ecclesiastical person made or ordained by any authority, power, or jurisdiction, derived, challenged or pretended, from the pope or see of Rome, or that shall profess himself or otherwise appear to be such by practising and teaching of others to say any popish prayers, by celebrating masses, granting of absolutions, or using any other of the Romish ceremonies and rites of worship, by or

of what name, title or degree soever such person shall be called or known, who shall continue, abide, remain or come into this province, or any part thereof, after the tenth day of September aforesaid, shall be deemed and accounted an incendiary and disturber of the public peace and safety, and an enemy to the true Christian religion, and shall be adjudged to suffer perpetual imprisonment; and if any person, being so sentenced and actually imprisoned, shall break prison and make his escape, and be afterwards retaken, he shall be punished with death.

And further it is enacted:

(Section 3) That every person which shall wittingly and willingly receive, relieve, harbor, conceal, aid or succor any Jesuit, priest, missionary or other ecclesiastical person of the Romish clergy, knowing him to be such, shall be fined two hundred pounds, one moiety thereof to be unto his majesty for and towards the support of the government of this province, and the other moiety to the informer; and such person shall be further punished by being set in the pillory on three several days, and be also bound to the good behavior at the discretion of the court.

And be it also enacted:

(Section 4) That every offense to be committed or done against the tenour of this act, shall and may be inquired of, heard and determined in the court of assize and general gaol delivery, specially to be appointed to sit either within the county where the offense is committed, or where the offender is apprehended or taken, or in any other county within the province, any law, usage or custom to the contrary notwithstanding.

And further be it enacted by the authority aforesaid:

(Section 5) That it shall and may be lawful to and for every justice of the peace to cause any person or persons suspected of being a Jesuit, seminary priest, or of the Romish clergy, to be apprehended and convented before himself or some other of his majesty's justices; and if such person do not give a satisfactory account of himself, he shall be committed to prison in order to a trial. Also it shall and may be lawful to and for any person or persons to apprehend without a warrant any Jesuit, seminary priest, or other of the Romish clergy as aforesaid, and to convent him before the governor or any two of the council, to be examined and imprisoned in order to a trial, unless he gives a satisfactory account of himself. And

as it will be esteemed and accented as a good service done for the King by the person who shall seize and apprehend any Jesuit, priest, missionary, or Romish ecclesiastic as aforesaid, so the governor, with the advice and consent of the council, may suitably reward him as they shall think fit; provided, this act shall not extend or be construed to extend unto any of the Romish clergy which shall happen to be shipwrecked, or through other adversity shall be cast on shore, or driven into this province, so as he continue or abide no longer within the same than until he may have opportunity of passage for his departure; so also as such person immediately upon his arrival shall forthwith attend the governor, if near to the place of his residence, or otherwise on one or more of the council or next justices of the peace, and acquaint them with his circumstances, and observe the directions which they shall give him, during his stay in the province.

August 9, 1700

66 New York Act Against  
Jesuits and Popish Priests

[Colonial Laws of New York, 1, 428-30]

Whereas divers Jesuits, priests and popish missionaries have of late come and for some time have had their residence in the remote parts of this Province and other his majesty's adjacent colonies, who by their wicked and subtle insinuations industriously labour to debauch, seduce and withdraw the Indians from their due obedience unto his most Sacred majesty, and to excite and stir them up to sedition, rebellion and open hostility against his majesty's Government, for prevention whereof be it enacted . . .

That all and every Jesuit and seminary priest, missionary or other spiritual or ecclesiastical person made or ordained by any authority, power or jurisdiction derived, challenged or pretended from the Pope or See of Rome, now residing within this province or any part thereof, shall depart from and out of the same at or before the first day of November next in this present year seventeen hundred.



And be it further enacted by the authority aforesaid, That all and every Jesuit, seminary priest, missionary or other spiritual or ecclesiastical person made or ordained by any authority, power or jurisdiction derived, challenged or pretended from the pope or See of Rome, or that shall profess himself or otherwise appear to be such by preaching and teaching of others to say any popish prayers, by celebrating masses, granting of absolutions, or using any other of the Romish ceremonies and rites of worship by what name, title or degree soever, such a person shall be called or known, who shall continue, abide, remain or come into this province or any part thereof after the first day of November aforesaid shall be deemed and accounted an incendiary and disturber of the public peace and safety and an enemy of the true Christian religion, and shall be adjudged to suffer perpetual imprisonment, and if any person being so sentenced and actually imprisoned shall break prison and make his escape and be afterwards retaken, he shall suffer such pains of death penalties and forfeitures as in cases of felony.

And it is further enacted by the authority aforesaid, That every person that shall wittingly and willingly receive, harbour, conceal, aid, succour and relieve any Jesuit, priest, missionary or other ecclesiastical person of the Romish Clergy, knowing him to be such, and be thereof lawfully convicted before any of his majesty's courts of records within this Province, which Courts are hereby empowered and authorized to hear, try and determine the same, he shall forfeit the sum of two hundred pounds current money of this Province, one half to his Majesty for and towards the support of the Government and the other half to the informer who shall sue for the same in any court of record within this province, wherein no essoyn, protection or wager of law shall be allowed, and such person shall be further punished by being set in the pillory on three several days and also be bound to good behaviour at the discretion of the Court.

And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for every justice of the peace to cause any person or persons suspected of being a Jesuit, seminary priest or of the Romish clergy to be apprehended and conveyed before himself and some other of his majesty's justices, and if such person do not give satisfactory account of himself he shall be committed to prison in order to a trial; also it shall and may be lawful to and for every person



or persons to apprehend without a warrant any Jesuit, seminary priest or other of the Romish clergy as aforesaid and to convent him before the Governor or any two of the Council to be examined and imprisoned in order to trial, unless he give a satisfactory account of himself; and as it will be esteemed and accepted as a good service done for the King by the person who shall seize and apprehend any Jesuit, priest, missionary or Romish ecclesiastic as aforesaid, so the Governor of this province for the time being, with the advice and consent of the Council, may suitably reward him as they think fit.

Provided this act shall not extend, or be construed to extend, unto any of the Romish clergy, who shall happen to be shipwrecked, or through other adversity shall be cast on shore or driven into this province, so as he continue or abide no longer within the same than until he may have opportunity of passage for his departure; so also as such person immediately upon his arrival shall forthwith attend the Governor if near to the place of his residence, or otherwise on one or more of the Council or next justices of the peace, and acquaint them with his circumstances and observe the directions which they shall give him, during his stay in the province.

October 18, 1701

67 New York Disfranchises  
Catholics

[Colonial Laws of New York, 1, 452-53]

An Act for the more regular proceedings in the elections of representatives for the several cities and counties within this Province.

That from henceforth and forever hereafter, No Papist or Popish recusant, or such person or persons as shall refuse . . . to take the oaths appointed by law to be taken, instead of the oaths of allegiance and supremacy, and to sign the test and association . . . shall be suffered to give his or their vote or votes.

November 27, 1700

68 Pennsylvania Law Concerning  
Liberty of Conscience

[Statutes at Large of Pennsylvania, 2, 3-4]

In 1689, in the wake of the rebellion in England, the proprietary government in Pennsylvania removed all Catholics (if any there were) from office. In the years (1692-1694) when Pennsylvania was a royal colony, the governor carried out the royal instructions to impose the usual anti-Catholic oaths and test. With William Penn absent in England, his government after 1696 carried on the policy of applying oaths and test. In 1699 Penn returned to his colony and set about restoring religious liberty as far as he was able. On the same day as the present law, two others were enacted. "An Act for Naturalization" (ibid., 2, 29-31) did not require any anti-Catholic oaths. "An Act directing the attests of several officers and ministers" (ibid., 2, 39-42) allowed men to assume office without anti-Catholic declarations. These two acts, together with the present Law Concerning Liberty of Conscience were vetoed by the Queen in Council, February 1705. See Charles Stillé, "Religious Tests in Provincial Pennsylvania," Pennsylvania Magazine of History and Biography, 9 (1888), 365-406.

Almighty God, being the only Lord of Conscience, Father of Lights and Spirits and the author as well as object of all divine knowledge, faith and worship, who only can enlighten the minds and persuade and convince the understandings of people, in due reverence to His sovereignty over the souls of mankind:

Be it enacted . . . That no person, now or at any time here after, living in this province or territories, who shall confess and acknowledge one Almighty God to be the creator, upholder and ruler of the world, and that professeth him or herself obliged in conscience to live peaceably and quietly under civil government, shall in any case be molested or prejudiced for his or her conscientious persuasion or practice; nor shall he or she at any time be compelled to frequent or maintain any religious worship, place or minister whatsoever, contrary to his or her mind, but shall freely and fully enjoy his or her

Christian liberty in that respect, without any interception or reflection.

October 28, 1701

69 Charter of Privileges for  
Pennsylvania and Delaware

[Thorpe, Federal and State Constitutions, 1, 588; 5, 3077]

The Frame of Government proclaimed by William Penn in 1682 had been replaced by a second in 1683 and by a third in 1696. The present Charter of Privileges remained the organic law of Pennsylvania and of Delaware until the American Revolution. After 1702, Delaware, though usually under the same governor as Pennsylvania, had its own legislative assembly. It will be noted that although office-holders had to profess Christianity, freedom of religion was granted to all theists. The "Attests as now established by the law" referred, not to the usual anti-Catholic oaths and test, but to the affirmations in the Pennsylvania law enacted in 1700.

Because no people can be truly happy, though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences, as to their religious profession and worship: and Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as the Object of all divine knowledge, faith and worship, who only doth enlighten the minds, and persuade and convince the understandings of people, I do hereby grant and declare, That no person or persons, inhabiting in this Province or Territories, who shall confess and acknowledge one almighty God, the Creator, Upholder and Ruler of the World; and profess him or themselves obliged to live quietly under the civil government, shall be in any case molested or prejudiced, in his or their person or estate, because of his or their conscientious persuasion or practice, nor be compelled to frequent or maintain any religious worship, place or ministry, contrary to his or their mind, or to do or suffer any other act or thing, contrary to their religious persuasion.

And that all persons who also profess to belive in Jesus Christ, the Saviour of the World, shall be capable (notwithstanding their other persuasions and practices in point of conscience and religion) to serve this government in any capacity, both legislatively and executively, he or they solemnly promising, when lawfully required, allegiance to the King as Sovereign, and fidelity to the Proprietary and Governor, and taking the attests as now established by the law . . .

September 11, 1704

70 Maryland Closes  
Catholic Church

[Archives of Maryland, 26, 46]

The early governors of Maryland as a royal province were instructed by the British government to tolerate all religions, including the Catholic. When John Seymour was appointed governor, however, the words "except Papists" were added to his instructions. Personally anti-Catholic, Seymour initiated an anti-Catholic policy that was carried on through his administration and that of his successor. One of the first measures was a decision by the governor and his council to close a well-known Catholic church in St. Mary's City. Thereafter in colonial Maryland, all Catholic services of worship were performed, not in churches, but in private houses. See Charles B. Clark, "The Career of John Seymour, Governor of Maryland, 1704-1795," Maryland Historical Magazine, 48 (1953) 134-59.

The members of this board, taking under their consideration that such use of the Popish chapel of the city of St. Marys in St. Mary's County, where there is a Protestant church and the said county court is kept, is both scandalous and offensive to the government, do advise and desire His Excellency the Governor to give immediate orders for the shutting up the said Popish chapel and that no person presume to make use thereof under any pretense whatsoever. Whereupon it was ordered by his Excellency the Governor that the present sheriff of St. Mary's County lock up the said chapel and keep the key thereof.

October 3, 1704

71 Maryland Act  
Against Popery

[Archives of Maryland, 26, 340]

Formally entitled "An Act to prevent the growth of Popery within this Province," this law was passed by the House of Delegates and the Council on September 30, and signed by Governor Seymour on October 3, 1704. Even for the British government, this act of 1704 was too much. The Queen in Council on January 3, 1706 ordered an indefinite suspension of the law, though the British did not veto the enactment outright. The Maryland legislature on April 15, 1707 obediently enacted "An Act for suspending during the Queen's pleasure the prosecution of the priests . . ." (ibid., 27, 146-48). The Act against Popery was eventually repealed in 1718 (ibid., 33, 289).

An Act to Prevent the Growth of Popery within this Province.

. . . whatsoever Popish bishop, priest or Jesuit shall baptize any child or children other than such who have Popish parents, or shall say Mass or exercise the function of a Popish bishop or priest within this province, or shall endeavor to persuade any of her majesty's liege people to embrace and be reconciled to the Church of Rome and shall be thereof legally convict, shall forfeit the sum of fifty pounds sterling for every such offense . . . and shall also suffer six months' imprisonment of his or their body or bodies without bail or mainprise.

. . . if any Popish bishop, priest or Jesuit after such conviction aforesaid shall say Mass or exercise any other part of the office or function of a Popish bishop or priest within this province, or if any Papist or person making profession of the Popish religion shall keep school . . . such person or persons . . . shall upon such conviction be transported out of this province to the Kingdom of England together with his conviction, in order to his suffering such pains and penalties as are provided by the statute made in the 11th and 12th year of the reign of his late Majesty, King William the Third, entitled An Act for the further prevention of the growth of Popery.



December 9, 1704

72 Maryland Permits Private  
Catholic Worship

[Archives of Maryland, 26, 431]

Protests against the Act against Popery led Governor Seymour and the Maryland legislature temporarily to allow the celebration of Masses, banned by the act, provided they were said in private houses. When the period of grace of eighteen months was near its end, Maryland Catholics petitioned that it be extended (ibid., 26, 591). The legislature at first rejected the petition, but eventually reconsidered and extended the act for another year (ibid., 26, 597, 630). When the British government in 1706 ordered an indefinite suspension of the Act against Popery of 1704, the permission for private acts of Catholic worship was no longer needed.

An Act for suspending the prosecution of any priests of the communion of the Church of Rome incurring the penalties of an Act of Assembly entitled An Act for preventing the growth of Popery by exercising his function in a private family of the Roman communion but in no other case whatsoever.

. . . no Popish bishop, priest or Jesuit shall by virtue of the said act of assembly for or by reason of exercising his function in a private family of the Roman Communion be prosecuted or indicted before any her Majesty's justices empowered to hold plea thereof within this province until the full end and expiration of the term of eighteen months from the publication of this law or until her Majesty's pleasure shall be declared therein.

May 6, 1704

73 South Carolina Excludes  
Catholics as Legislators

[Statutes at Large of South Carolina, 2, 232]

The intent of the act is made quite clear by its very lengthy title. The oaths required were the usual one and the test had also to be signed.

An Act for the more effectual preservation of the government of this Province, by requiring all persons that shall hereafter be chosen members of the Commons House of Assembly, and sit in the same, to take the oaths and subscribe the declarations appointed by this act, and to conform to the religious worship in the Province according to the Church of England, and to receive the sacrament of the Lord's Supper according to the rites and usage of the said Church.

November 4, 1704

74 South Carolina Excludes  
Catholics from Naturalization

[Statutes at Large of South Carolina, 2, 251]

The law, entitled "An Act for making aliens free of this part of the Province," provided for their naturalization. One stipulation was that the prospective citizen take the usual anti-Catholic oaths.

That no person or persons now of the age of sixteen shall have the benefit of this act given and granted, until he or they shall on the Holy Evangelists, or otherwise according to the form of his profession, take . . . oaths . . . .

October 1705

75 Virginia Rejects the  
Testimony of Catholics

[Statutes at Large of Virginia, 3, 298]

The anti-Catholic stipulation of this law of 1705 was repeated in legislation of 1748 (ibid., 5, 480) and of 1753 (ibid., 6, 338). The wording of the law of 1748 was "That popish recusants convict shall be incapable to be witnesses, in any cause whatsoever."

That Popish recusants convict, Negroes, mulattoes and Indian servants, and others not being Christians, shall be deemed and taken to be persons incapable in law to be witnesses in any cases whatsoever.

January 12, 1706

76 Pennsylvania Law Concerning  
Liberty of Conscience

[Statutes at Large of Pennsylvania, 2, 171]

On returning to his colony in 1699, William Penn saw to it that the anti-Catholic measures imposed after 1692 were repealed. In 1702, however, the British government ordered that officeholders take the usual oaths, and the Pennsylvania officers obeyed (Colonial Records of Pennsylvania, 2, 89). In 1705 the Queen in Council vetoed the laws of 1700. To replace the Law concerning Liberty of Conscience of 1700, the proprietary government enacted the present measure which restricted toleration to Christians.

That no person . . . who shall profess faith in God the Father and in Jesus Christ, His only Son, and in the Holy Spirit, one God blessed forevermore, and shall acknowledge the Holy Scrip-

tures of the Old and New Testament to be given by divine inspiration, and when lawfully required shall profess and declare that they will live peaceably under the civil government, shall in any case be molested or prejudiced for his or her conscientious persuasion . . .

January 12, 1706

77 Pennsylvania Excludes  
Catholics from Office

[Statutes at Large of Pennsylvania, 2, 219]

Obeying the instructions of the British government that office holders take the usual oaths and test, the Pennsylvania legislature enacted the following "Act to ascertain the number of members of assembly and to regulate the election." The test oath of Pennsylvania is here given as a variation from the more usual form.

That no person who shall hereafter be a member of the assembly or house of representatives of this Province shall be capable to vote in the said house, or sit there during any debate after their Speaker is chosen, until he shall make and subscribe the following declarations and profession of his Christian belief, viz.,

[Then, three oaths or affirmations: 1. of allegiance and abjuration of foreign potentates; 2. the test; 3. belief in Trinity. No. 2 is as follows:]

And I, A.B., do solemnly and sincerely in the presence of God profess, testify and declare that I do believe that in the sacrament of the Lord's Supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever; and that the invocation or adoration of the Virgin Mary or any other saint, and the sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous.

May 1708

78 Connecticut Excludes  
Catholics from Toleration

[Colonial Records of Connecticut, 5, 50]

The Standing Order of Connecticut grudgingly gave toleration to Protestant dissenters from the Congregational Church, in this act "For the ease of such as soberly dissent from the way of worship and ministry established by the ancient laws of this government, and still continuing." The law referred to is the Act of Toleration which required the anti-Catholic oaths and test.

That if any such persons shall at the county court of that county they belong to, qualify themselves according to an act made in the first year of the late King William and Queen Mary, granting liberty of worshipping God in a way separate from that which is by law established, they shall enjoy the same liberty and privilege in any place within this colony without any let, hindrance, and molestation whatsoever.





PART IV

UNDER THE THREE GEORGES

1714-1776

1715

79 North Carolina Excludes  
Catholics from Toleration

[State Records of North Carolina, 23, 11]

A government independent of the southern part of Carolina was not organized until 1712. Shortly thereafter, the assembly of North Carolina, ignoring the right of religious liberty guaranteed in the Carolina charters, restricted the toleration of religion. This restriction was maintained after North Carolina became a royal province in 1730.

An Act for Liberty of Conscience, and that the Solemn Affirmation of the People called Quakers shall be accepted instead of an oath in the usual form.

. . . that all Protestant dissenters within this government shall have their meetings for the exercise of their religion without molestation.

July 5, 1715

80 New York Excludes Catholics  
from Naturalization

[Colonial Laws of New York, 1, 862]

An Act . . . for naturalizing all Protestants of foreign birth now inhabiting within this colony.

That all persons of foreign birth, being Protestants . . . are declared to be his Majesty's natural born subjects . . . Provided always . . . that every such person . . . shall . . . take the oaths by law appointed to be taken, instead of the oaths of allegiance and supremacy, subscribe the test, and make, repeat and swear to and subscribe the abjuration oath . . .

June 30, 1716

81 South Carolina Rejects  
Irish Catholic Immigrants

[Statutes at Large of South Carolina, 2, 646-49]

An Act to encourage the importation of white servants into this Province.

[Act offered a bounty of 25 pounds per servant]

And whereas there hath been imported into this Province several native Irish servants that are Papists, and persons taken from Newgate and other prisons, convicted of capital crimes, to the great prejudice and detriment of this Province, Be it therefore enacted . . .

That no person by this act required to purchase white servants shall be obliged to purchase any Irish servants or persons convicted in England or elsewhere of capital crimes . . .

And in order to prevent the imposing upon this Province persons of lewd and profligate lives, Be it further enacted

That all merchants or masters of vessels or others shall upon their oaths declare that to the best of their knowledge none of the servants by them imported be either what is commonly called native Irish, or persons of known scandalous character, or Roman Catholics. And if any merchant . . . shall ship any servants to this Province, he shall be obliged to send a certificate that such persons or servants are Protestants . . . and with such a certificate, Irish servants, being Protestants, may be lawfully imported here . . .

1717

82 Maryland Tax on  
Irish Papists Doubled

[Archives of Maryland, 33, 109-10]

. . . all masters of ships and vessels, or others, importing Irish servants, being Papists, into this province, by land or by water, at the time of their entry, shall pay unto the naval officer for the time being, belonging to such port or place where they make their entry, the additional sum of twenty shillings current money, over and above the twenty shillings sterling per poll imposed by a former act of assembly, for every Irish servant so imported . . .

[Naval officers were] required to administer to every such Irish servant except children under the age of fourteen years (to be adjudged at the discretion of the naval officer) so imported as aforesaid the several oaths appointed by act of assembly, and cause them to subscribe the oath of abjuration and the test . . .

1715

83 Catholic Widows in Maryland  
Liable to be Deprived of  
Their Children

[Archives of Maryland, 30, 334]

With an interregnum of four years after the death of anti-Catholic Governor John Seymour, the Maryland drive against the Catholics was revived by the new royal governor, John Hart, who arrived in the colony in 1714. After the rule of Maryland was returned to the Baltimores in 1716, Hart was continued to 1720 as proprietary governor. See Bernard C. Steiner, "The Restoration of the Proprietary and the Legislation against the



Roman Catholics during the Governorship of Captain John Hart (1714-1720), " Annual Report of the American Historical Association, 1 (1899) 229-307. This inhuman piece of legislation was repeated in a law of 1729 (Archives of Maryland, 36, 488).

Provided always that where any person being a Protestant that shall die and leave a widow and children, and such widow shall intermarry with any person of the Romish communion or be herself of that opinion and profession, it shall and may be lawful for his Majesty's governor and council within this province upon application to them made to remove such child or children out of the custody of such parents and place them where they may be securely educated in the Protestant religion

. . .

1716

84 Maryland Catholics  
Excluded from Office

[Archives of Maryland, 30, 612-17]

Actually, the Catholic Marylanders were excluded from holding elective office by a provision in an act of 1715: "Provided also that no ordinary keeper within this province . . . or any other person disabled by any laws of England from sitting in Parliament shall be elected, chosen, or serve as deputy or representative in the said General Assembly . . ." (ibid., 30, 272, 620). The present law makes the ban explicit.

An act for the better security of the peace and safety of his Lordship's government, and the Protestant interest within this province.

. . . the following oaths shall be administered to, and taken by, all persons that already have, or hereafter shall be admitted to have and enjoy any office or place of trust within this province in the manner following:

I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to his Majesty, King George. So help me God.

I, A.B., do swear that I do from my heart abhor, detest and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, has, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within the Kingdom of Great Britain, or any of the dominions thereto belonging. So help me God.

[Next, an oath of abjuration of the Stuart Pretender.]

And that without the taking the aforementioned oaths, and subscribing the oath of abjuration, and making and subscribing the declaration following,

I, A.B., do declare, that I do believe that there is not any transsubstantiation in the Sacrament of the Lord's Supper, or in the elements of bread and wine, at or after the consecration thereof, by any person whatsoever, . . . no person or persons whatsoever shall be capable of holding, executing or enjoying any office, deputation or trust within this province whatsoever . . .

. . . in case any person who holds any office or trust within this province, and has taken the oaths appointed by this law, shall afterwards be present at any Popish assembly, conventicle or meeting, and join with them in their service of Mass, or receive the Sacrament in that communion, he shall not only forfeit his office and incur the penalty in this act enacted, but also be incapable of taking, holding or executing any commission or place of trust within this province, until he shall be fully reconciled to the Church of England, and receive the Communion therein.

1717

85 Maryland Act Against  
Popery of 1704 Repealed

[Archives of Maryland, 33, 289]

The British government had ordered the suspension of the operation of the Act of 1704 and had kept it in abeyance. As a consequence, the Maryland legislature, putting the best face on the matter they could, now repealed it. But the wording of the law makes it clear that they did not do it out of any sympathy with the oppressed Catholics.

An Act to repeal a certain Act of Assembly, entitled An Act to prevent the growth of Popery within this province.

Whereas at a session of Assembly . . . [in] 1704 was made and enacted an act of Assembly entitled An Act to prevent the growth of Popery within this province, and also one other act made at a session . . . [in] 1707, suspending the execution of some clauses of the aforementioned act, until her late Majesty's further pleasure should be declared and signified therein, concerning which suspension-act sundry great disputes have arisen among the Romanists, for removal of which disputes, and considering that by one act of Parliament made in the 11th and 12th year of the reign of his late Majesty, King William III, Chap. 4, there is good provision made to prevent the growth of Popery, as well in this province and throughout all others his Majesty's dominions, and that an act of assembly of this province can in no way alter the effect of that statute . . . be it enacted That the said act of assembly to prevent the growth of Popery be and is hereby repealed.

86 Maryland Catholics  
Disfranchised

[Archives of Maryland, 33, 288]

And whereas notwithstanding all the measures that have been hitherto taken for preventing the growth of Popery within this province, it is very obvious, that not only professed Papists still multiply and increase in number, but that there are also too great numbers of others that adhere to and espouse their interest, in opposition to the Protestant Establishment:

And being under just apprehensions (from what steps they have already taken) that if Papists should continue to be allowed their vote in electing of delegates, they, with their adherents, and those under their influence, will make such a party at the elections of many of the counties within this province, as well as the city of Annapolis, as to determine the choice in some of their great favorites and adherents, which if they should accomplish, how much it would tend to the discouragement and disturbance of his Lordship's Protestant government, is not easy to imagine:

It is therefore humbly prayed, that it may be enacted; and be it enacted, by the authority aforesaid, by and with the advice and consent aforesaid,

That all professed Papists whatsoever be (and are hereby declared) incapable of giving their vote in any election of a delegate or delegates within this province, either for counties, cities, or boroughs, unless they first qualify themselves for so doing, by taking the several oaths appointed to be taken by an act of assembly of this province, entitled an act for the better security of the peace and safety of his Lordship's government and the Protestant interest within this province, and subscribe the oath of abjuration and declaration therein mentioned.

And furthermore, inasmuch as too many persons that are either really Papists, or Popishly inclined, act in disguise, and will not make any public profession of their principles, for the better and more effectually carrying on their wicked

and malicious designs, for the undermining and subverting our present Establishment:

Be it therefore further enacted, by the authority, advice and consent aforesaid, that it shall and may be lawful for the sheriff, or other judges of elections, and such sheriff or other judges are hereby required, as often as any of them shall see needful (or upon information of any other person duly qualified to vote) to tender and administer the oaths and subscriptions aforesaid, to any person or persons suspected to be Papists, or Popishly inclined, and upon their refusal, to set aside such vote or votes.

May 5, 1722

87 New Jersey Moves  
Against Catholics

[Acts of the General Assembly of the Province of New Jersey, 62-66]

The present law, entitled "An Act for the security of his Majesty's government of New Jersey," is aimed directly at the Catholics.

Whereas some persons in this province, disaffected to his Majesty's person and government, propagate their pernicious principles to the great hurt of his Majesty's faithful and loyal subjects inhabiting within the same; and by reason of their intermeddling in public affairs, in contempt of his Majesty's legal and just authority, obstruct the public administration; and will, if not prevented, prove dangerous to the government of this Province; Be it enacted . . .

[The usual anti-Catholic oaths and test are to be tendered to "any person whatsoever."]

And that every person so neglecting or refusing to take the oaths, and make the declaration hereinafter mentioned, shall be, from the time of such neglect or refusal, taken, esteemed and adjudged a Popish Recusant Convict, and as such to forfeit and be proceeded against. . . .

. . . every such person so neglecting or refusing as aforesaid, shall be taken, deemed, esteemed and adjudged a Popish



Recusant Convict, and as such to forfeit and be proceeded against as a Popish Recusant by all or any of the laws of England should forfeit and be proceeded against, any usage to the contrary hereof in any wise notwithstanding.

May 10, 1729

88 Pennsylvania Taxes  
Irish Immigrants

[Statutes at Large of Pennsylvania, 4, 135-40]

The imposition of oaths which Catholics could not take and the singling out of Irish for a discriminatory tax do not square with the principles on which Penn had founded his colony. The act was repealed within a year, on February 14, 1730. But at the same time, Catholics were excluded from a law stating "That it shall and may be lawful to and for all religious societies or assemblies and congregations of Protestants within this province to purchase any lands or tenements" (ibid., 4, 208-11). This later law, enacted February 6, 1731, was twice before passed and twice vetoed by England (ibid., 2, 424; 3, 376).

An Act laying a duty on foreigners and Irish servants imported into this Province.

[The act demanded that all alien immigrants within 48 hours of landing] take the oaths appointed to be taken instead of the oath of allegiance and supremacy, and shall also take the oath of abjuration . . .

That all masters of vessels, merchants, or others who shall import or bring into any port or place within this province any Irish servant or passenger upon redemption, or on condition of paying for his or her passage upon or after their arrival in the plantations, shall pay for every such Irish servant or passenger upon redemption as aforesaid the sum of twenty shillings.

May 1730

89 Virginia Declares Catholics  
Incapable To Be Guardians

[Statutes at Large of Virginia, 4, 285]

The anti-Catholic provision was contained in a law regulating wills and testaments. It was repeated in a law of October 1748 (*ibid.*, 5, 449). It provided that a father could, in his will, commit his infant children to the care, as guardians

. . . to any person or persons, in possession or remainder,  
other than Popish recusants.

June 9, 1732

90 Charter of Georgia

[Thorpe, Federal and State Constitutions, 2, 773]

This charter of the last British colony was issued by King George II. It offered complete religious freedom to all, save the universally excepted Papists, on whom were imposed the usual oaths. The charter was surrendered on June 20, 1752, when a royal government was set up in the colony.

And for the greater ease and encouragement of our loving subjects and such others as shall come to inhabit in our said colony, we do by these presents, for us, our heirs and successors, grant, establish and ordain, that forever hereafter, there shall be a liberty of conscience allowed in the worship of God, to all persons inhabiting, or which shall inhabit or be resident within our said province, and that all such persons, except papists, shall have a free exercise of religion, so they be contented with the quiet and peaceable enjoyment of the same, not giving offense or scandal to the government . . .

And we do hereby grant and ordain, that such person or persons, for the time being as shall be thereunto appointed by the said corporation, shall and may at all times, and from time to time hereafter, have full power and authority to administer and give the oaths, appointed by an act of parliament, made in the first year of the reign of our late royal father, to be taken instead of the oaths of allegiance and supremacy; and also the oath of abjuration, to all and every person and persons which shall at any time be inhabiting or residing within our said colony . . .

1734

91 Delaware Excludes Catholics  
As Representatives

[Laws of the State of Delaware, 1, 154-55]

Save for the present act, Delaware took few steps against Catholics. Earlier, in 1704, it had required lawyers to take the usual anti-Catholic oaths (ibid., 1, 56); and later it was to imitate the Pennsylvania law permitting religious organizations, if they were Protestant, to acquire real estate by an act passed in 1744 (ibid., 1, 271-74).

That no person who shall be hereafter a member of the assembly or house of representatives of this government, shall be capable to vote in the said house, or sit there during any debate after their speaker is chosen, until he shall make and subscribe the following declarations and profession of his Christian belief . . .

[There follows the usual anti-Catholic oaths and the test.]

July 3, 1741

92 South Carolina Encourages  
Protestant Immigrants

[Statutes at Large of South Carolina, 3, 593]

An Act for further securing his Majesty's Province of South Carolina by encouraging Protestants to become settlers therein.

And all and every other white Protestant person and persons who shall . . . come into this Province . . . shall during their settling or inhabiting on the said lands . . . be exempted and discharged from paying all Provincial taxes for the said land . . .

February 3, 1743

93 Pennsylvania Excludes Catholics  
from Naturalization

[Statutes at Large of Pennsylvania, 4, 391-94]

In 1740 the British Parliament passed a general act of naturalization for the British colonies. This act imposed the usual anti-Catholic declarations under oath. In the present law, the legislators of Pennsylvania refer to the British act and extend its benefits to those unable to take the oaths - save to Catholics. The purpose of the law is sufficiently indicated by its title.

An Act for naturalizing such foreign Protestants as are settled or shall settle within this province who, not being of the people called Quakers, do conscientiously refuse the taking of any oath.

1743

94 Connecticut Excludes  
Catholics from Toleration

[Colonial Records of Connecticut, 8, 522]

This act repealed and replaced the act of toleration of dissenters of 1708. It required that those seeking toleration take the usual anti-Catholic oaths.

That, for the future, that if any of his Majesty's good subjects, being Protestants, inhabitants of this colony, that shall soberly dissent from the way of worship and ministry established by the laws of this colony, that such persons may apply themselves to this assembly for relief, where they shall be heard.

September 21, 1744

95 Anti-Catholic Law of  
New York of 1744

[Colonial Laws of New York, 3, 424-29]

This act seemingly was directed as much against Moravian missionaries, who were suspect of being Papists in disguise, as against the Catholics. Connecticut, too, in May 1743, legislated against this suspected Protestant sect in an "Act providing relief against the evil and dangerous designs of foreigners and suspected persons" (Colonial Records of Connecticut, 8, 521).

An Act for securing his Majesty's government of New York.

Whereas an invasion hath lately been attempted against his Majesty's Kingdom and government in favor of a popish pretender . . . and we his loyal subjects . . . being desirous to prevent the machinations of all emissaries of that kind and to



secure this his Majesty's government, and as much as in us lies to prevent the ignorant and unwearied [sic!] from being led away by Jesuitical and other pretenses of vagrant teachers,

Be it enacted . . . That it shall and may be lawful for any of the judges . . . to summon any person (except women and all other persons under the age of twenty years) or persons they shall suspect to be disaffected to the government, to appear before them . . . to take the hereinafter mentioned oaths.

[There follow the usual oaths. For evading or refusing the oaths, a penalty of 20 pound fine or six months in jail was imposed.]

That no vagrant preacher, Moravian or disguised Papist shall preach or teach either in public or private without first taking the oaths appointed by this act, and obtaining a license from the governor . . . and every vagrant preacher, Moravian and disguised Papist that shall preach without taking such oath and obtaining such license as aforesaid shall forfeit the sum of 40 pounds . . .

August 6, 1754

## 96 Georgia Disfranchises Catholics

[Labaree, Royal Instructions, 1, 96]

These instructions to the first royal governor of Georgia continued the usual anti-Catholic measures of the time.

And it is our further will and pleasure that the writs for calling an assembly as aforesaid be issued thirty days before the time fixed in the same writs for the meeting of the assembly, and that no person shall be capable of being elected a representative to serve, or of sitting in general assembly, who is a Popish recusant or under the age of twenty-one years, or who is not possessed in his own right of a freehold estate of 500 acres of land within the district or division for which he is chosen; nor shall any Popish recusant, person under the age of twenty-one years, or who is not possessed in his own right of a freehold estate of fifty acres of land be deemed capable

of giving his vote for the election of a representative to serve in general assembly.

1755

97 North Carolina Excludes  
Catholics as Guardians

[State Records of North Carolina, 23, 577; 25, 319, 416]

When the first royal governor was appointed to North Carolina in 1730, he received the usual anti-Catholic instructions (ibid., 3, 91, 110). The present law, entitled "An Act for the better care of orphans," was reenacted in 1760 and again in 1762. See James M. Hurley, "The Political Status of Roman Catholics in North Carolina," Records of the American Catholic Historical Society, 38 (1927) 237-96. The present law provided that parents in their wills might leave the raising of their minor children

. . . to any person or persons other than the people called Quakers, and Popish recusants.

1756

98 Maryland Doubles Taxes  
on Catholic Lands

[Archives of Maryland, 52, 508]

To raise money to finance the French and Indian War, the Maryland assembly imposed taxes, including a tax of a shilling per hundred acres on all landowners, and then placed a special tax on the lands of Catholics.

And that all Papists, or reputed Papists, of the age of eighteen years or upwards, holding lands as aforesaid, who shall refuse or neglect to take the several oaths of the government,

and sign the oath of abjuration and the test, now by law established, being tendered to him, her, or them . . . shall pay . . . the further sum of one shilling current money for every hundred acres . . .

March 1756

99 Virginia Anti-Catholic  
Law of 1756

[Statutes at Large of Virginia, 7, 35-39]

Rumors that the Catholics, plotting with the Indians and French or Spanish, planned to kill all the Protestants and to seize control of the government had circulated in the English colonies for years. After the defeat by the French and their Indian allies of the Virginians under Colonel Washington and later of the British army of General Braddock, the anti-Catholic rumors gained greater credence and resulted in the present law.

An Act for disarming Papists, and reputed Papists, refusing to take the oaths to the government.

I. Whereas it is dangerous at this time to permit Papists to be armed, Be it enacted, by the Lieutenant-Governor, Council, and Burgesses of this present General Assembly, and it is hereby enacted by the authority of the same,

That it shall and may be lawful for any two or more justices of the peace, who shall know or suspect any person to be a Papist, or shall be informed that any person is, or is suspected to be, a Papist, to tender, and they are hereby authorized and required to tender, to such persons so known or suspected to be a Papist, the oaths appointed by act of parliament to be taken instead of the oaths of allegiance and supremacy; and if such person, so required, shall refuse to take the said oaths, and subscribe the test, or shall refuse or forbear to appear before the said justices for the taking the said oaths and subscribing the said test upon notice to him given, or left at his usual place of abode, by any person authorized in that behalf, by warrant under the hands and seals of the said two justices, such person from henceforth shall be taken to be, and is here-

by declared to be, liable and subject to all and every the penalties, forfeitures, and disabilities hereafter in this act mentioned.

II. [Justices to keep lists of jurors and non-jurors.]

III. And for the better securing the lives and properties of his Majesty's faithful subjects, Be it further enacted and declared

That no Papist or reputed Papist so refusing or making default as aforesaid shall or may have, or keep in his house or elsewhere, or in the possession of any other person to his use, any arms, weapons, gunpowder or ammunition, (other than such necessary weapons as shall be allowed to him, by order of the justices of the peace at their court, for the defense of his house or person) and that any two or more justices of the peace, from time to time, by warrant under their hands and seals, may authorize and empower any person or persons in the day-time, with the assistance of the constable where the search shall be (who is hereby required to be aiding and assisting herein) to search for all arms, weapons, gunpowder or ammunition, which shall be in the house, custody, or possession of any such Papist or reputed Papist, and seize the same for the use of his Majesty and his successors; which said justices of the peace shall from time to time, at the next court to be held for the country where such seizure shall be made, deliver the said arms, weapons, gunpowder and ammunition in open court, for the use aforesaid.

IV. [Papists to turn in their arms; if they fail, they are to be imprisoned] . . . there to remain without bail or mainprise for the space of three months, and shall also forfeit and lose the said arms, and pay treble the value of them . . .

V. [Anyone not reporting a Papist having arms to receive the same penalties.]

VI. [Informers to be rewarded.]

VII. [If non-juror recants] . . . and shall there in open court take the said oaths and subscribe the said test, he shall from thenceforth be discharged of and from all disabilities and forfeitures . . .

VIII. That no Papist or reputed Papist . . . shall or may have or keep, in his own possession, or in the possession of any other person to his use, or at his disposition, any horse or horses, which shall be above the value of five pounds . . .

[Such horses to be confiscated.]

IX. [If any person shall conceal such a horse, the penalty is also imprisonment for three months, and a fine treble the value of the horse.]

March 29, 1757

100 Pennsylvania Disarms and  
Taxes Catholics

[Archives of Pennsylvania, 3, 120-36]

This rather lengthy "Act for forming and regulating the militia" contains several specifically anti-Catholic provisions.

[The sheriff of each county is to draw up lists of all males, aged 17-55]

. . . noting against every name to what religious society each person belongs, especially such as are Papists, or reputed Papists . . .

[The sheriff is then authorized to draft men into military service, save the pacifists and "all Papists and reputed Papists."]

That all arms, military accoutrements, gun powder and ammunition, of what kind soever, any Papist or reputed Papist within this province, hath or shall have in his house or houses or elsewhere one month after the publication of this act, shall be taken from such Papist or reputed Papist, by warrant under the hands and seal of any two justices of the peace, who are hereby empowered and required to issue a warrant for search as often as they shall receive information, or have good cause to suspect the concealment of arms and ammunition in the houses of any Papist or reputed Papist . . .

[Since Catholics were exempt from the muster of the militia, they were subjected to a special tax.]

That every male Papist or reputed Papist, between the age of seventeen and fifty five years . . . shall and they are hereby enjoined and required to pay on demand to the captain . . . the sum of twenty shillings. . .



April 7, 1759

101 South Carolina Excludes  
Catholics from Franchise

[Statutes at Large of South Carolina, 4, 98-101]

An election law provided that the franchise could be exercised  
by

. . . every free white man, and no other person, professing the  
Protestant religion . . .

PART V

THE AMERICAN REVOLUTION AND AFTER

June 12, 1776

102 Virginia's Declaration  
of Rights

[Thorpe, Federal and State Constitutions, 7, 3814]

With the outbreak of the American Revolution, the collapse of the royal governments, and the urging of the Continental Congress, the colonies began to write state constitutions. In the year 1776, while Massachusetts, Connecticut, and Rhode Island set up governments based on their colonial charters, eight other states adopted constitutions. The first constitution, that of New Hampshire adopted January 5, 1776, and the second, that of South Carolina adopted March 26, were merely stop-gap measures, made no mention of religion, and were soon replaced. A convention of Virginians met at Williamsburgh on May 6 and adopted a constitution on June 29. Like other states, Virginia enacted a bill of rights. Virginian courts ruled that this bill was an integral part of the state constitution. It announced religious freedom.

Section 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

December 5, 1776

103 Virginia Repeals  
Penal Laws

[Statutes at Large of Virginia, 9, 164]

Though the matter seems adequately treated in the Virginia Bill of Rights, Virginia apparently thought it better formally to repeal the penal laws.

That all and every act of parliament, by whatever title known or distinguished, which renders criminal the maintaining any opinions in matters of religion, forbearing to repair to church, or the exercising any mode of worship whatsoever, or which prescribes punishments for the same, shall henceforth be of no validity or force within this commonwealth.

January 16, 1786

104 Virginia Bill for Establishing  
Religious Freedom

[Statutes at Large of Virginia, 12, 85]

This, one of the most famous statements on religious freedom, was written and introduced into the House of Burgesses by Thomas Jefferson on June 13, 1779. Laid on the table for years, it was enacted largely due to the influence of James Madison.

II. Be it enacted by the General Assembly, that no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain their opinion in matters of religion, and that the

same shall in no wise diminish, enlarge or affect their civil capacities.

July 2, 1776

105 Constitution of  
New Jersey

[Thorpe, Federal and State Constitutions, 5, 2597]

Adopted on the day the Continental Congress formally voted our independence from Great Britain, this constitution, written by a state convention, was declared in force. Though it declared for freedom of religion, Catholics were still liable to exclusion from the franchise and from elective office by the restrictive word "Protestant." The restriction was not removed until the year 1844 (ibid., 5, 2599).

XVIII. That no person shall ever, within this Colony, be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor, under any pretext whatever, be compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person, within this Colony, ever be obliged to pay tithes, taxes, or any other rates, for the purpose of building or repairing any other church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform.

XIX. That there shall be no establishment of any one religious sect in this Province, in preference to another; and that no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any Protestant sect, who shall demean themselves peaceably under the government, as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed by others of their fellow subjects.



September 21, 1776

106 Constitution of  
Delaware

[Thorpe, Federal and State Constitutions, 1, 566-568]

Written by a convention meeting at New Castle, this constitution was declared in force without ratification by the electorate. Catholics received full religious freedom. The test oath, which excluded non-Christians from office, was removed in the constitution of 1792 (ibid., 1, 568).

Art. 22. [Prescribed oath of office:]

I, A.B., do profess faith in God the Father, and Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration.

Art. 29. There shall be no establishment of any one religious sect in this State in preference to another; and no clergyman or preacher of the gospel, of any denomination, shall be capable of holding any civil office in this State . . .

September 28, 1776

107 Constitution of  
Pennsylvania

[Thorpe, Federal and State Constitutions, 5, 3082]

The colony of William Penn acted in the tradition of its founder. Catholics were restored to full civil rights.

II. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding; And that no man ought or of right can be compelled to attend any religious worship, or erect or support

any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control, the right of conscience in the free exercise of religious worship.

November 11, 1776

108 Constitution of  
Maryland

[Thorpe, Federal and State Constitutions, 3, 1689-1690]

In this organic law, the Marylanders returned to the great tradition of the Lords Baltimore. Catholics recovered full civil and religious freedom.

XXXIII. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless under colour of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others, in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry . . .

XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this convention, or the Legislature of this State, and a declaration of a belief in the Christian religion.

December 18, 1776

109 Constitution of  
North Carolina

[Thorpe, Federal and State Constitutions, 5, 2788]

Though religious freedom was proclaimed, Catholics were still excluded from full possession of civil rights. In 1835, Article XXXII was amended to read "No person who shall deny the being of God, or the truth of the Christian religion, or the divine authority of the Old and New Testament . . ." (ibid., 5, 2799).

A Declaration of Rights

XIX. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences.

The Constitution, or Form of Government

XXXII. That no person, who shall deny the being of God, or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State.

XXXIV. That there shall be no establishment of any one religious church or denomination in this State, in preference to any other; neither shall any person, on any pretense whatsoever, be compelled to attend any place of worship contrary to his own faith or judgment, nor be obliged to pay, for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, or had voluntarily and personally engaged to perform; but all persons shall be at liberty to exercise their own mode of worship . . .

February 5, 1777

110 Constitution of  
Georgia

[Thorpe, Federal and State Constitutions, 2, 784]

While freedom of religious worship was proclaimed, the sixth article of this constitution provided that some elected officers must be "of the Protestant religion." (ibid., 2, 786). Georgia, however, adopted a second constitution in 1789 which, while again proclaiming religious freedom, removed the religious restriction on elective office (ibid., 2, 789).

Article LVI. All persons whatever shall have the free exercise of their religion; provided it be not repugnant to the peace and safety of the State; and shall not, unless by consent, support any teacher or teachers except those of their own profession.

April 20, 1777

111 Constitution of  
New York

[Thorpe, Federal and State Constitutions, 5, 2636-38]

Invaded by the British, New York was the last of the thirteen colonies to adopt a constitution. While the anti-Catholic John Jay tried to write his prejudices into the document, he was for the most part checked. Catholics were not excluded from the general right of religious liberty. Immigrant Catholics, however, could not become citizens of the state until the anti-Catholic oath, directed specifically against them, was removed in 1806.

XXXVIII. And whereas we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the

bigotry and ambition of weak and wicked priests and princes have scourged mankind, this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind: Provided, That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

XLII. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that it shall be in the discretion of the legislature to naturalize all such persons, and in such manner, as they shall think proper: Provided, all such of the persons, so to be by them naturalized, as being born in its parts beyond the sea, and out of the United States of America, shall come to settle in and become subjects of this State, shall take an oath of allegiance to this State, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate, and State in all matters, ecclesiastical as well as civil.

July 8, 1777

112 Constitution of  
Vermont

[Thorpe, Federal and State Constitutions, 6, 3740-43]

The territory of Vermont, claimed by New York and New Hampshire, created its own government and became the fourteenth state. Under this first organic law, Catholics were guaranteed freedom of worship. But since they did not profess the Protestant religion, their civil rights were in question. Nor could they take the oath of office required of a state legislator. In subsequent constitutions, matters were rectified. Vermont adopted a revised constitution in 1786. While the Protestant oath was still required (*ibid.*, 6, 3757), the phrase "nor can any man who professes the Protestant religion . . ." was replaced by "nor can any man be justly deprived or abridged of any



civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship" (ibid., 6, 3752). The anti-Catholic oath was removed in the constitution of 1793 (ibid., 6, 3767).

## Chapter I. A Declaration of the Rights of the Inhabitants of the State of Vermont

III. That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding, regulated by the word of God; and that no man ought, or of right can be compelled to attend any religious worship, or erect, or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man who professes the Protestant religion, be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiment, or peculiar mode of religious worship, and that no authority can, or ought to be vested in, or assumed by, any power whatsoever, that shall, in any case, interfere with, or in any manner control, the rights of conscience, in the free exercise of religious worship . . .

## Chapter II.

Sec. IX. And each member before he takes his seat, shall make and subscribe the following declaration, viz.

I do believe in one God, the Creator and Governor of the universe, the rewarder of good and punisher of the wicked. And I do acknowledge the scriptures of the old and new testament to be given by divine inspiration, and own and profess the Protestant religion.

And no further or other religious test shall ever, hereafter, be required of any civil officer or magistrate in this State.

March 19, 1778

113 Constitution of  
South Carolina

[Thorpe, Federal and State Constitutions, 6, 3250-56]

The temporary constitution which was adopted March 26, 1776, and which made no mention of religion, was replaced by the South Carolinians in 1778. Written by the general assembly, it was passed as an act and became effective in November 1778. While other states spoke of religious liberty or freedom, South Carolina still spoke of toleration. Further, it was the only state outside of New England to declare an established church.

XII. . . . and no person shall be eligible to a seat in the said senate unless he be of the Protestant religion . . .

XIII. . . . No person shall be eligible to sit in the house of representatives unless he be of the Protestant religion . . .

XXXVIII. That all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this State. That all denominations of Christian Protestants in this State, demeaning themselves peaceably and faithfully, shall enjoy equal civil and religious privileges.

1790

114 Constitution of  
South Carolina

[Thorpe, Federal and State Constitutions, 6, 3264]

Since the constitution of 1778 was not satisfactory, the South Carolinians elected a state convention which met in Columbia on June 3, 1790 and produced a new constitution more in agreement with the other states, outside of New England, on the question of religious freedom. The "Christian Protestant religion" was disestablished, religious tests were abolished, and religious freedom was proclaimed.

Article VII, Section I. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this State to all mankind . . .

June 15, 1780

115 Constitution of  
Massachusetts

[Thorpe, Federal and State Constitutions, 3, 1889-90]

By the time of the adoption of the Federal Constitution in 1789 all the states outside of New England had disestablished churches and proclaimed religious freedom. The only exception, South Carolina, fell into step in 1790. Within New England, Rhode Island of course continued its policy of religious freedom and the ban against Catholic voters was removed. Vermont removed the last anti-Catholic provision from its constitution in 1793. While Massachusetts, Connecticut, and New Hampshire all proclaimed religious liberty, Protestants dissenting from the long established Congregational Church had to fight for full religious freedom. See Joseph

F. Thorning, Religious Liberty in Transition.

In Massachusetts a constitution drawn up by the state legislature was submitted early in 1778 to the electorate and was rejected. A special constitutional convention was thereupon elected. It drew up the constitution which was put into effect in 1780. While it proclaimed liberty of conscience, for all practical purposes it continued the establishment of the Congregational Church. Full religious freedom was not achieved until 1833 (Thorpe, 3, 1914). An anti-Catholic oath required of all men elected or appointed to office had, however, been removed by a constitutional amendment in 1820.

Part I, Article 2: It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and preserver of the universe. And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship.

Art. III: . . . the people of this commonwealth have a right to invest their legislature with power to authorize and require the several towns, parishes, precincts, and other bodies-politic or religious societies to make suitable provision, at their own expense, for the institution of the public Protestant teachers of piety, religion and morality in all cases where such provision shall not be made voluntarily.

And the people of this commonwealth have also a right to and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

. . . and all the monies paid by the subject of public worship and of the public teachers aforesaid shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends . . .

And every denomination of Christians, demeaning themselves peaceably and as good subjects of the commonwealth, shall be equally under the protection of the law; and no subordination to any one sect or denomination to another shall

ever be established by law.

#### Chapter VI, Article I

[All men, appointed or elected to office, were required to declare under oath]

. . . that no foreign prince, person, prelate, state or potentate hath, or ought to have, any jurisdiction, superiority, preeminence, authority, dispensing or other power, in any manner civil, ecclesiastical or spiritual, within this commonwealth . . .

June 2, 1784

### 116 Constitution of New Hampshire

[Thorpe, Federal and State Constitutions, 4, 2454-62]

First of the thirteen states, New Hampshire proclaimed a constitution on January 5, 1776. This temporary organic law made no mention of religion. A proposed substitute, written in 1778, was rejected by town meetings in 1779. A new state convention met in the summer of 1781, but did not finish its work until October 31, 1783. The constitution it produced became effective on June 2, 1784. It required that the state governor, senators, and members of the house of representatives be Protestants; e.g., "That no person shall be capable of being elected a senator who is not of the Protestant religion . . ." (*ibid.*, 4, 2461). For almost a hundred years this constitutional provision was maintained in spite of repeated efforts to remove it. The discriminatory clause was not removed until 1876. The mention of "public Protestant teachers of piety" is still retained in the present New Hampshire constitution.

#### Article I

V. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, senti-



ments, or persuasion, provided he doth not disturb the public peace or disturb others in their religious worship.

VI. . . . the people of this state have a right to empower, and do hereby fully empower, the Legislature to authorize, from time to time, the several towns, parishes, bodies corporate or religious societies within this state to make adequate provision at their own expense, for the support and maintenance of public Protestant teachers of piety, religion, and morality.

July 13, 1787

117 An Ordinance for the Government  
of the Territory of the United States  
Northwest of the River Ohio

[Thorpe, Federal and State Constitutions, 2, 960-61]

Enacted by the Confederate Congress, this document enunciated the principle of religious freedom as the proclaimed policy of the United States.

Article I

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory.

Article III

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

October 5, 1818

118 Constitution of  
Connecticut

[Thorpe, Federal and State Constitutions, 1, 537-45]

The struggle for religious liberty in Connecticut was particularly bitter between the Standing Order of Congregationalists and dissenting Protestants. See Richard J. Purcell, Connecticut in Transition. Connecticut, still governed under the royal charter of 1662, elected a special convention, which met to write a constitution at Hartford on August 26, 1818. The constitution it produced was ratified by the electorate on October 5, 1818. It proclaimed full religious freedom to all Christians.

Article I Declaration of Rights

That the great and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in this State, provided that the right hereby declared and established shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the State.

Sec. 4. No preference shall be given by law to any Christian sect or mode or worship.

Article VII Of Religion

Sec. 1. It being the duty of all men to worship the Supreme Being, the great Creator and Preserver of the Universe, and their right to render that worship in the mode most consistent with their consciences, no person shall by law be compelled to join or support, nor to be classed with, or associated to, any congregation, church or religious association; but every person now belonging to such congregation, church, or religious association, shall remain a member thereof until he shall have separated himself therefrom, in the manner hereinafter provided. And each and every society or denomination of Christians in this State shall have and enjoy the same and equal powers, rights, and privileges; and shall have power

and authority to support and maintain the ministers or teachers of their respective denominations, and to build and repair houses for public worship by a tax on the members of any such society only, to be laid by a major vote of the legal voters assembled at any society meeting, warned and held according to the law, or in any other manner.



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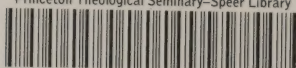
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